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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

ORGANIZATION
LEGISLATIVE ASSEMBLY BROADCAST CHANNEL
OFFICE OF THE ASSEMBLY

WEDNESDAY, NOVEMBER 25, 1987



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Van Horne, Ronald G. (London North L)

Clerk: Forsyth, Smirle

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Office of the Assembly:

Mitchinson, Tom, Director, Information Services Branch

DesRosiers, Claude L., Clerk of the Legislative Assembly

Beer, Charles (York North L)

From the York County Hospital Foundation:

Watson, Whipper, Chairman, Whipper Watson CAT Scan Campaign

From Rogers Cable TV/Cable 10 Newmarket:

Blackwell, David, Program Manager

From TVOntario:

Allman, Catherine, Manager, Telecommunications Relations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, November 25, 1987

The committee met at 3:51 p.m. in committee room 1.

ORGANIZATION

Clerk of the Committee: I would like to call the meeting to order.

Honourable members, it is my duty to call upon you to elect one of your number as chairman of this committee.

Mr. J. M. Johnson: To show the impartiality of the committee, I would like the honour and privilege to nominate my good friend and colleague Herb Epp as chairman of this committee.

Clerk of the Committee: Are there any further nominations? There being none, I declare nominations closed. Mr. Epp is the elected chairman of the committee.

Mr. Chairman: Thank you very much for your vote of confidence. It is certainly one of the toughest fights I have ever had in the political arena.

Mr. Sterling: Tougher than the election for you anyway.

Mr. Chairman: I must say I have had some elections that have been a little more expensive than this one.

Mr. Breaugh: You spoke prematurely, Mr. Chairman.

Mr. Chairman: There are various things that this committee does. I am going to get to the point right away, Mr. Clerk, with regard to the election of a vice-chairman, but I just wanted to say that I had the pleasure and honour to serve on this committee from 1981 to 1985 when it was known as the standing committee on procedural affairs. I believe it to be an outstanding committee and certainly one in which a lot of things can be done. It has some very important functions to perform.

It is a committee, I think, which is mostly nonpartisan. If there is any single committee that is nonpartisan, in the sense that it can be in this Legislature with three various divisions, this is the committee that can perform that particular function. I know the past experience has been that it works much more on the basis of consensus rather than on votes.

All of you have before you the various things that the committee has done in the past, particularly within the past year. There is no sense going through those things at this time. We have a few important functions to perform this afternoon, some delegations, but before we get to that, I will ask for someone to make a motion with regard to a vice-chairman.

Mr. Van Horne: I would be pleased to nominate Gilles Morin as vice-chairman.

Mr. Chairman: Mr. Morin's name has been put into nomination. Any others? If not, all those in favour? Opposed? Carried.

Congratulations, Gilles. I look forward to working closely with you as well as with all the members of the committee.

The next item, if you look in your agenda, is item 3. We require a motion that moves that, unless otherwise ordered, a transcript of all committee meetings be made by the Hansard reporting service.

Mr. Faubert: So moved.

Mr. Chairman: All those in favour? Opposed? That is carried.

Item 4 is an application by Mr. Watson regarding a computerized axial tomography or CAT scan telethon for the shared use of the Ontario parliamentary transponder. Like some of you, I am not exactly clear on what a transponder is. It is not necessarily one of the words in my daily vocabulary such as food, drink, sleep and so forth.

Maybe we can have the benefit of everyone coming forward and taking seats up here and we will start with Mr. Mitchinson giving some indication of what the request is before us and what a transponder is. If everybody else wants to move up, they can or if you want to wait for a couple of minutes, that is fine too.

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL

Mr. Mitchinson: I will just take a few minutes before Mr. Watson outlines his application to explain a bit about the process and the role that the committee has in this application for the benefit of the new members of the committee.

The broadcast unit has control of a transponder as a means of getting the broadcast signal distributed throughout the province. I guess the best way to describe it is that we send a signal to the satellite. The component on the satellite which allows the cable operator throughout the province to pick up the signal is called a transponder, so it is like a channel on the satellite itself. Each satellite has many transponders. Ours is called T28 on this particular satellite.

We have this transponder on a basis of 24 hours a day, 365 days a year. The only time it is used by us is when we are broadcasting the proceedings of the Legislature and of committees and in our repeat broadcasts in the evening hours. There is one exception to that. For one hour a day, on Sunday afternoons, this committee has permitted the Wawatay Native Communications Society to use our transponder for native language programming in northern communities. That was approved by the committee during this past year.

In an effort to make as good a use as possible of this excess transponder time that is available, the committee established a procedure about a year ago to deal with requests for use of excess channel capacity or excess transponder capacity.

Very briefly, the process is that an application is made, usually coming through me, which outlines in detail what the proposed use is. That application is sent to TVOntario which is the licence holder of our broadcast system for a report to the committee on the regulatory, the policy and the technical implications of any request that is made. That report is prepared and submitted to the committee. The broadcast and recording service also prepares a report of the budgetary and the operational implications of any

request. Both those reports, together with the applicant's submission, are made to the committee which then determines whether it approves of the request.

If there are financial implications to approving the request, then a recommendation would go from the committee to the Board of Internal Economy for a final decision; but if the application has no financial implications, then the decision of the Legislative Assembly committee is the final ruling.

This process has only been handled once so far with respect to the transponder and that was the Wawatay Native Communications Society. In this instance, Mr. Watson wrote to me earlier this summer with a similar application. TVOntario has completed its report as has the broadcast unit, and they are both available to you for your review. Unless there are any questions, that is the process.

Mr. Sterling: What does it cost the Legislative Assembly for this transponder?

Mr. Mitchinson: It is about \$1,200,000. It is a tariff set and it increases annually.

Mr. Sterling: Is there any chance or has there been any attempt by the Legislative Assembly to sell the excess time on a commercial basis?

Mr. Mitchinson: About six months ago, I wrote to the communications branch of the Ministry of Transportation and Communications and asked it to solicit interest either within the government or through its various contacts throughout the province to see if use could be made of this transponder, both the video component and the data subcarriers on the transponders that would never be used by our broadcast unit.

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I have not received any request from them for it but I did have a conversation with them within the last few weeks about an AM radio operator in northern Ontario who has approached me to see if we could work something out. He is going to be submitting a proposal which will go through this consideration process, the understanding being that it has to be paid for.

That is what has been done.

Mr. Sterling: Running our television system here it is costing a lot of money over the years. This is a big chunk of our operating cost.

Mr. Mitchinson: Absolutely. It is by far the largest chunk.

Mr. Sterling: It makes good sense to me to try recoup some of the costs with contracts that can sell commercially as well as--

Mr. Morin: But not to compete with the industry.

Mr. Sterling: Why not?

Mr. Morin: Prices would have to become competitive with the industry. It should not be a free-for-all.

Mr. J. M. Johnson: I have read the presentation, the request from Mr. Watson. I would narrow it down to two areas of the concerns that I have.

One is the commitment we have made to this native communications society for the hour program. Is it only one hour every Sunday?

Mr. Mitchinson: Yes.

Mr. J. M. Johnson: Is there any possibility that some accommodation could be made for that particular Sunday?

Mr. Mitchinson: I think Mr. Watson will be speaking to that.

Mr. J. M. Johnson: I will leave that for the time being. One concern I have would be how we could accommodate that.

The second is the clearer setting of precedent. Quite frankly, I like to set precedents. I think one of the hangups we have is that we are so damned concerned about setting a precedent that we say no automatically. I would have no hesitation in supporting the proposal if precedent was the only reason.

I think the committee should approve it with the understanding that every single request would have to be dealt with in the same manner. It would not just be automatic that because we allowed it to happen once the same thing would happen. Each time it would come to the committee which could then make a determination based on the merits of the case. I would like to pursue that at a later time with Mr. Watson.

Mr. Chairman: I believe Ms. Allman from TVOntario will speak to the policy implications of this particular decision.

Mr. J. M. Johnson: I think those are the two issues involved.

Mr. Breaugh: I want to try, if possible, to cut through some of this. I know everybody wants to present his point of view. I do not want to deny that for a minute but I have read all of the report. It seems to me that every reasonable criterion that was set out has now been met, including the Canadian Radio-television and Communications Commission sending its letter saying there was no problem from that end.

It is not clear to me whether there are any cost implications, but from my reading of the report there are not. Is that correct?

Mr. Mitchinson: That is correct.

Mr. Breaugh: So it seems to me that the committee is now supposed to do what it said it would do. It will look at these requests. It has set them out to be reviewed by TVOntario and by the staff people.

So far it gets down to the point of two things. One, can we accommodate the Wawatay broadcast? I believe that is certainly technically possible, and maybe Mr. Watson and others will have a suggestion on how to do that. Two, is this an appropriate use of our facility? That is the committee's job. That is the way we laid it out and that is how we set up the guidelines.

It seems to me, if nobody objects, that we simply hear from Mr. Watson and see what he has to say. If we can find a way to meet our obligations to the Wawatay proposal, then the only decision left for the committee to make is whether this is an appropriate use of our facility. I would suggest it is.

Mr. Chairman: Thank you very much, Mr. Mitchinson. I will ask Mr.

Beer, Mr. Watson and Mr. Blackwell. I think we will leave it at that. Ms. Allman, you are with TVOntario, so we can let you talk later if you have any questions. Is that OK? Mr. Beer, do you want to introduce your friends?

Mr. Beer: I think that probably everyone knows Whipper Billy Watson. I was saying to him before that the problem for him is wherever he goes people of course know him. At the risk of embarrassing him, and I will take that risk, he has over the last several decades in York region and that whole area contributed a great deal in terms of many fund-raising campaigns he has run for various charities, the most recent of which is to purchase a CAT scan.

On my right is David Blackwell, who is the program manager with Rogers Cable TV in Newmarket. He is co-ordinating the telethon as a private citizen but his background is in television.

I want to note a couple of things briefly and then turn it over to Mr. Watson. When the Speaker sent his letter of October 21, he quite properly raised a number of concerns that led to his decision. As it happened, in terms of some of the technical arrangements that had to be made for the telethon, we realized that it was still possible to come before the committee if it met in November, that we still would be able to meet the December 5 and 6 deadline, which is what led us to request this meeting.

We accept that there are some policy issues and Mr. Johnson has set out the two key ones, Wawatay and the question of precedent. I think it is fair to say, and Mr. Watson and Mr. Blackwell can speak to this, that Wawatay need not be an issue. That can be accommodated, whether we stop our broadcast so that they go ahead in the normal fashion--we have technical advice that that would not be involved--or perhaps if it was requested on that particular day that they might forgo their use, obviously that could be accommodated. That does not constitute a problem.

Clearly, there are some issues that relate to who will use the transponder and how that would be done. As Mr. Breaugh said, we have gone through the material that has been provided from the assembly and we believe there is case that can be made that this is the kind of project where we are reaching potentially over half a million people through a special network of cable stations all of which are in the catchment area of York County Hospital, where the CAT scan will be installed.

We are certainly be prepared to answer any questions. I feel at this point, though, it would be most effective if Mr. Watson could address the committee and describe in more detail the nature of the campaign and why the use of the transponder has been requested.

Mr. Chairman: Welcome to Queen's Park, Mr. Watson. I do not know whether you have had the opportunity of addressing a committee before, but we are more than pleased to see you and Mr. Blackwell.

Mr. Watson: I did 20 years ago on violence.

Mr. Chairman: I will not ask you to elaborate.

Mr. Watson: They asked me if wrestling should be barred on TV because of violence, and I said it most certainly should if all the other violence was going to be cut off. At that time it just happened to be that some young boy watched a program of Superman diving out the window and the kid did the same thing and, of course, he got killed. I said if you want to cut

out all the violence, let us cut it out all together. Anyway, that was my last experience.

I am very happy to come here and represent probably hundreds of people who have put in thousands of hours as volunteers. The first thing I tell all the people who have worked with me in the last 40 years as volunteers in raising money is that they do not get paid. Second, if they have any expenses, they pay for them themselves. That has applied all the way down the line and it applies to this campaign which is on right now.

I was asked if I would be a chairman to raise money to put a CAT scan in our hospital. As you know, there has been a lot of turbulence with the doctors in this last year and the doctors' feeling was, "Why not let the government put it in?" I realize that the government is the people anyway, so no matter what we do, whether we have the government put it in or whether we pay for it ourselves, this comes out of our pocket.

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Anyway, I have formed many committees and we have a campaign going. Our objective is to raise \$1.7 million for the CAT scan in the York County Hospital. We have so far reached \$1,350,000 and we are hoping that by the time we put on our telethon on December 5 and December 6 we will be able to raise the balance of the money.

There was some discussion about one hour on the Sunday between five and six but it was in use and it would not be available. That is fine. We are quite willing to cut off our television just prior to the five o'clock hour. If it could be available to have it for two more hours, we would be very happy, but if it is not, we are very happy to cut off the telethon at five o'clock.

The CAT scan for our hospital is vitally important. We have people who are waiting two and three months to go to Etobicoke to have a CAT scan done. That is one of the reasons I took on this chairmanship, so that our people would have the availability of a CAT scan in our hospital.

I have used every means possible to raise money. By the way, ladies and gentlemen, I would like to say this will probably be the largest telethon that has ever been on cable television anywhere in the world. I do not think even the people who are putting it together realize how big this event is going to be. We have been very fortunate that the Global Television Network, CFTO-TV, CKVR-TV and many other communication people, along with many directors and production people, have offered their services free--no charges whatsoever.

Of course, I am always a great believer that if you are going to run a campaign, make sure that every dollar you earn goes to the organization you are raising it for. I remember Connie Smythe saying to me many years ago when we were both together with the Easter Seals Society, he called me into his office one day and he said: "Whipper, first of all you go out and you try to get it for nothing. If you cannot get it for cost, then try somebody else." That was his philosophy and it has always been mine.

I am very fortunate to have so many people helping. Last night a service club made a presentation to me and I was telling them about volunteers. I said that if they became part of our volunteer group that was putting this whole thing together, by the time we get finished we will probably have 10,000 people involved.

I look at this as a capital cost project. It is so different from many other telethons where they are raising money for ongoing expenses. We are raising money for a piece of equipment that is going into a hospital, that belongs to the people. We are asking to use a piece of equipment that belongs to the people and we want to be able to say that when December 5 and 6 comes along, we had the opportunity to let our people see our program. We are reaching out into York region, into Simcoe region, to the Barrie-Orillia area, over into the Uxbridge area, over into the western part of the area.

We are reaching out with this program and we want the people to be able to see it. The only way we can do it is by using the satellite. As a matter of fact, we even have to have the satellite to take the program from where it is being produced back to the station that is going to be putting it on the air.

What kind of decision you make is entirely up to you, but I am just telling you this, as I have told the people during this campaign: "You are working for yourselves really. You are working to put something in your hospital." I tried to tell the doctors: "I have never dealt with so many grass-roots people in my 40 years of campaigning as I have in the past six or seven months. You do not realize how much respect the people feel for the doctors, nurses, therapists and technicians and the other people who work within the hospital. The hospital has become part of their family. That is the reason I am involved. That is the reason many of our people are involved. If you can help us make it possible for people to see this program and help us to get this thing over the top, we will not be coming and asking the government, 'Will you please help us and give us some money so we can get on with our program?'" We are not doing that. We are asking the people to do it.

That is exactly the way this whole thing was put together. I hope you will see fit so that we can have this program on your satellite so all our people in York county and Simcoe county can see the telecast.

Mr. Chairman: Thank you, Mr. Watson. Mr. Blackwell, do you have some comments to make?

Mr. Blackwell: I think Whipper has done it all.

Mr. Chairman: Okay. Questions? Mr. Breaugh?

Mr. Breaugh: I think there really is only one question that you can answer and then one for us to answer.

We have this long-standing commitment to the Wawatay people to use the satellite facilities on Sunday afternoon. I, for one, feel that was our first accepted proposal and that is an ongoing communications necessity for people who are very isolated in northwestern Ontario, but it does seem to me that you can work around that. You can find other ways. You can go to local broadcasting for an hour and come back later, or you can stop your broadcast at five o'clock. Is it acceptable to you that our commitment to Wawatay people stays in place and you can work around that?

Mr. Watson: Yes, it is.

Mr. Breaugh: If that is acceptable, frankly, I think the committee then has its own decision to make about whether this is a reasonable and decent group of people to use the facilities that we have. I think the answer to that is reasonably obvious.

Mrs. Sullivan: The question I had related to the actual period of use. Am I correct in understanding that you would want the use of the facility both on Saturday and Sunday?

Mr. Watson: That is correct.

Mrs. Sullivan: Saturday from 9 a.m. to 7 p.m. and Sunday, 9 a.m. to 5 p.m. Is that what you are now suggesting?

Mr. Watson: On Saturday it would be from one o'clock to one in the morning, and on Sunday from 10 to about five o'clock. It could cut out at a given time for any other programs.

Mr. Faubert: This is a question to the gentleman from Rogers, Mr. Blackwell. I think this is going over other cable systems, is that correct?

Mr. Blackwell: Yes, it is.

Mr. Faubert: But there is no networking between your cable systems?

Mr. Blackwell: No. Rogers is involved, privately owned cable companies are involved, like Aurora Cable TV, Pefferlaw Cable TV, and there is no common microwave link to all these communities. This is the one common link.

Mr. Faubert: This is the only technical solution to the problem?

Mr. Blackwell: Yes.

Mr. Chairman: But they are all in York, Durham and Simcoe counties?

Mr. Blackwell: It would cover Aurora, Uxbridge, Orillia, Barrie, Borden, Keswick, Pefferlaw, Beaverton, Richmond Hill and surrounding areas of Richmond Hill and Newmarket, and our surrounding areas, such as Bradford, East Gwillimbury, Sharon and Mount Albert.

Mr. Morin: If you were to go to private industry, how much would that cost?

Mr. Blackwell: We have inquired. We have talked to Telesat Canada to rent time on the occasional-use transponder. That would be approximately \$13,000.

Mr. Morin: Is that all?

Mr. Blackwell: That is all.

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Mr. Morin: Does TVOntario cover the whole of Ontario? Are there areas that are blind? Are there areas that are not covered?

Mr. Chairman: This is Catherine Allman, the manager of telecommunication relations for TVOntario.

Mr. Morin: Are there areas in Ontario that TVOntario does not cover?

Ms. Allman: There are areas in Ontario that we do not necessarily cover through our transmitter system, but the footprint of the satellite does cover the province. In fact, it does even spill over into other areas.

Mr. Morin: Is it channel 38 here in Toronto?

Mr. Sterling: Channel 39.

Mr. Morin: Does that channel reach all the areas across Ontario?

Ms. Allman: I think that is a question for Tom.

Mr. Mitchinson: The transponder services the entire province. Not all cable systems within the province pick up the Ontario broadcast.

Mr. Morin: I have nothing to say against the project but I do have one concern. It is a worthwhile project. God knows how difficult it is to raise money. We did the same thing in Ottawa. We did not have access to TVOntario; we did it on our own. If you recall, for a general hospital we raised over \$2 million. It took us a heck of a long time.

I am worried about creating a precedent. Jack, you are not worried about precedents; I am worried about precedents. What if it is in an area that is not covered by TVOntario and would like to have a fund-raising project? What would happen to them?

Mr. Sterling: There are two things here. I know what you are thinking about because we have talked about TVOntario and its coverage. Maybe the other people do not--

Mr. Chairman: Gentlemen, if we are going to debate this, I think we should have the questions answered first.

Mr. Sterling: I think I can clarify it. I think I know what Gilles is driving at. There are certain areas like Prescott, which I used to represent, that do not have TVOntario.

Mr. Morin: If Prescott wants to raise money, would it have access?

Mr. Sterling: Yes, they would, because basically they have cable television. What the transponder does is it takes the signal from here and a cable company picks up the signal and puts it into the cable system. A farm out in Spencerville could not get this particular program, nor would it be able to get this particular program. TVOntario is a different animal. Their general signal is not what Whipper Watson is going through. He is going through the transponder, to be picked up by various cable systems out beyond York.

Mr. Morin: One concern I have is that you are using government property; you are lending government property, and we are paying for it. Should you lend an Ontario Northland Railway train to some charitable organization? Should you lend the aircraft of the Premier (Mr. Peterson) to some charitable organization? I am just discussing the principle. It is only the principle. We are creating a precedent. Where do you stop? Is there any danger that it may become political? I do not want to sound like Scrooge, but I just want--

Mr. Breaugh: Not unless the Premier appears on the telethon.

Mr. Morin: It is a question of using government property. How will you use it?

Mr. Chairman: I think if you have some questions, we should try to answer those and then we can debate the pros and cons of all this and make a decision on that. If you have some other questions of the people before us, we should try to get those disposed of.

Mr. Faubert: May I just establish one thing? There is no cost involved in this, I take it? That is the response I got from TVOntario, right?

Mr. Chairman: That was the answer given to us earlier, that there was no cost accruing to the province of Ontario.

Interjections.

Mr. Breaugh: Let us be accurate, which I think is important here. There is no additional cost.

Mr. Faubert: How do they establish the \$13,000 cost for a part-time lease?

Mr. Chairman: That would be if they went to a private network.

Mr. Faubert: So the value of it really is \$13,000?

Mr. Chairman: Yes.

Mr. Faubert: Okay.

Mr. Chairman: Mr. Watson, do you want to elaborate on that?

Mr. Watson: I want to elaborate a little bit on what you are saying. I want you to realize we are raising capital money. This is not like somebody who wants to have a telethon to raise some money for general expenses. This is capital. We are putting something in a hospital. I am getting a lot of static from the doctors. I think there are about 150 doctors there, but only about 10 doctors have made a contribution towards a CAT scan. Their answer to me is, "Go to the government. They want to run things; let them put the CAT scan in." That is what they are telling me. My point is that we are trying to put a CAT scan in the hospital and we are going to the public and we are getting a good response.

Mr. Van Horne: We did receive in our background material a significant number of pages from TVO, which is not supporting the request. That bothers me a little bit because, although they use a lot of words, I am not sure if they really give us very good reasons for not going along with this. A specific area of concern is page 3 of the presentation, which talks about regulatory considerations. I am not sure if we are breaking any regulations if we go along with this request, yet you do not quite say that. Do we break any regulations?

Ms. Allman: If the charity organization has a temporary network, which will mean the responsibility for the broadcast would rest with it, that would be complying with regulations. If Wawatay is not pre-empted or if it--

Mr. Van Horne: I think we have already agreed on that.

Ms. Allman: Then that is within regulation as well.

Mr. Breaugh: I am not sure whether all the committee has this, but I

do have a letter from the Canadian Radio-television and Communications Commission, from W. L. Mahoney, who is in charge of granting the temporary network authority. To me, that was important. It was removing most of your considerations.

Mr. Van Horne: That means they are in compliance.

Mr. Breaugh: Yes.

Ms. Allman: That means they are within compliance, yes.

Mr. Van Horne: I think that is critical. I think many members have suggested the real issue is for us to determine whether or not we grant this request. I am a little upset with TVO and the length to which it goes to say that this cannot be supported. I really have problems with that, but that is maybe something we can discuss later. I think we should get on with the issue and approve it.

Mr. Chairman: I guess they wanted to be thorough and make sure that you had the benefit of their views. I think that is fair.

Mrs. Sullivan: I had one question, probably to Mr. Mitchinson, but perhaps in relationship with TVO, and it relates to the question raised earlier by Mr. Sterling. I assume that under the terms of the CRTC licence it would be impossible for the OLA time to be leased or sold, is that correct? This must be given away. I am not familiar with the financial considerations that come into play with subleasing. I am familiar with the policy considerations that the legislative committee would then be placing itself in competition with Telesat and its occasional-use transponder. That I know is a fact. I do not know what the repercussions of that might be. I am sure that either Tom or myself could get back to the committee with a direct answer on that.

Mr. Chairman: Just to get that answer, Mr. Mitchinson, are you aware whether or not this can be leased out? It would be my assumption, and it is only my assumption, that we are not in the business of leasing it out and, therefore, competing with the private networks and, therefore, we would not be leasing it out and that might be part of our criteria.

Mr. Mitchinson: It is not something that has been determined. I am not aware of whether there is any impediment to that or not. As an operating unit, we would look to TVO for advice on that.

Ms. Allman: Although it has been termed in this forum as a private network, it is partially publicly owned and it is regulated by the CRTC.

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Mr. J. M. Johnson: Just to be sure, there is no problem in honouring our commitment to the native people, no technical reason it cannot happen.

Ms. Allman: No.

Mr. J. M. Johnson: Then we only have the one issue to deal with which is not your problem; it is a political problem.

Mr. Breaugh: Unless there are other members who have questions, I am ready to move a motion.

Mr. Chairman: I was going to ask, are there any further questions? If not, thank you very much for your input. We are going to discuss this now.

Mr. Beer: Can I just say in closing that we want to underline the co-operation we had in working with the Legislative Assembly and with TVO. There were obviously a lot of technical things. We certainly were appreciative of those discussions and those efforts.

Mr. Chairman: By the way, I might say I apologize for the fact that we could not come to a--I hope we are going to come to a decision today but the committee, as you know, was not constituted until about an hour ago. There was a little event back on September 10 that came in the way of the committee dealing with it before this point and now we can deal with it.

Ms. Allman: May I just make a comment on the policy implications that perhaps have not been spoken about here, with your leave, make that separate from any application you have before you because in a sense it is not at all concerned with this specific application, but with any that might follow.

I wonder if the committee could give serious consideration to handling those that might follow should it decide that this would be a proper use for the transponder when the Office of the Assembly is not using it. That might involve some consideration of the policy and procedure that would make that application process streamlined. I am sure that everybody wonders where the time goes, but in any application process there are time lapses, so the more efficient a process that could be devised would probably be the most appreciated by any applicant that follows, whether it be for specific uses or Ontario-wide uses or commercial uses.

Mr. Breaugh: Could I move the motion then.

Mr. Chairman: Mr. Johnson has a question or comment.

Mr. J. M. Johnson: Not on this.

Mr. Chairman: Mr. Breaugh moves, seconded by Mrs. Sullivan, that the application be approved.

Mr. Breaugh: I want to speak to that because I think what we are doing here today is rather important. In going over the background, I tend to agree that the Speaker when he made his ruling made the correct ruling because at that time there were a number of outstanding problems that had not yet been resolved. I want to congratulate those who are working on this project. You kind of took it through, step by step, a very complicated system. The last letter I saw from the Canadian Radio-television and Telecommunications Commission stating that it had no objections to it really changed the picture for me.

We set up this process of having TVOntario provide us with its opinion on the matter and staff providing their opinion, which is something I think we need. The CRTC stuff is very complicated. It is kind of a dicey field. I think basically what we have to offer here is an underutilized system and it is to our benefit to utilize it as much as possible.

I want to say at the outset that I do not want to see us engage in a series of things which upset existing programs. I think the Wawatay proposal, as our first one, is something we should be very proud of as utilizing some

capacity we have in the system in a way that would be absolutely a model for Canada. It goes to that principle that I want to approve this one too because it basically speaks to the size of this province, the communications system that is available and the kind of vacancy in that system that our Legislative Assembly broadcast system can fill.

It provides a communication device just like--I guess the analogy I would use is that in the old days the government of Ontario would let somebody use the hall so that people could gather and talk to one another and just basically communicate. What we have now is kind of the electronic equivalent of the town hall and that is what we are letting people use now, a communications system, in this case a satellite system, that allows people in communities that do not have their local television station covering their whole broadcast area to can utilize the facilities we have to talk to one another and in this case to fund-raise.

Basically, one by one, the legitimate objections and the legitimate principles we have to think about have been met. What we are down to now is saying to these people that nothing can interfere with our existing commitment we have made to the Wawatay people. That stands and you are going to have to work around that. But secondly, it is our decision whether a community group of this kind is a suitable group to use the excess capacity we have in our system. I would suggest to you that it is, for this purpose and a number of other purposes. I think we may have some work to do in exploring other times when this capacity can be utilized, can be rented out or whatever, or whatever other group might come together. We will probably take that on an ongoing basis and that is not going to be easy.

I think when we started out to provide the broadcast system, we said we wanted something that would provide a province-wide communications system and the first priority was the proceedings of the Legislature. The second priority, I would say, as we have established it, is communications in the far regions of the northwest, and in this particular example, where there is no other way to do it.

What this proposal puts in front of us today is that this is also true in many other parts of our province. It is not just in the isolated areas of the north where there are these kinds of communications problems. In eastern Ontario, right almost in central Ontario, here is a group putting forward a proposal.

I want to speak to the precedent which I think is also important. I would interpret it this way: We are saying to groups that are nonprofit, that are interested in some kind of community work: "We have some capacity in our system to accept you. You are not the top priority and you have to work around existing things." For example, if somebody else came in with a proposal and said, "We want to take the Whipper Watson thing off the air for a couple of hours and do something else," we would say, "No, we have made our commitment to this group to use the system there."

It should not be interpreted that this would be an annual thing. I would want to reserve the right to kind of review this as being a reasoned use of the system we have.

I do think it fulfills most of the principles and requirements I can think of. I appreciate that the system is an awkward one but I hope there would not be an election that coincides with every application that comes in or we are going to be in trouble anyway. I think the system is not a bad one.

It is awkward because this is the first time through on this kind of approval process. I think we can approve this because we have assurances that it will not interfere with previous commitments we have made. I think it is probably wise for us now to spend a little more time laying out guidelines so that other people might understand a little more easily who might be able to use this.

I am comfortable with the notion that basically we are providing them with a communications device. We already have that. It is time that we have already paid for and that will not be utilized by anybody if we do not. I think one of the justifications for putting in a very good and also a very expensive communications system to broadcast the legislative process around Ontario is to utilize as best we can the excess capacity for groups like this.

I am happy to support the proposal. All the reservations I had have been met. I apologize for the agony of the process itself. It certainly was not a convenient one, but we have not done this before, so we are breaking some new ground.

Mr. J. M. Johnson: I had intended a major speech too but I will cut it short.

Mr. Breaugh: That will be the second precedent in one afternoon.

Interjections

Mr. J. M. Johnson: I would just like to address one suggestion to Mr. Morin. He has mentioned the fact that we are using government property. I cannot think of a better group of people to use government property than a group of people who are citizens, for this specific purpose. To me that is what it is all about. I have used as an example the schools. Surely it is government policy to encourage the citizens of a community to take advantage of the schools when they sit idle in the evenings and on Saturdays and Sundays. This is similar. As Mr. Breaugh pointed out, it is the old town hall complex. It makes a lot of sense. I am very pleased to support it.

Mr. Sterling: I would also like to support the motion.

I guess the one thing that worries me above all, Whipper, is your enthusiasm for the project in terms of saying this is something new, something greater, something better than what has been done before. God bless you, I hope you are very successful in raising the money for the CAT scanner and making a success of it, but sometimes success breeds success. I do not know whether we will be inundated with other requests trying to emulate what you have been able to accomplish through the use of this particular channel.

Having said that, we are not faced with that problem at this point in time. I am extremely satisfied with the case you put forward and I am a great admirer of yourself in terms of the work you have done over the last 40 years for the volunteer community. Therefore, I think it is a proper use of the channel at this time. I just say in reservation that if we get 20 groups next year, then I might view the matter in a different light, but that is not what we are facing at this time.

Mr. Watson: I just want to assure you of one thing. I will not be back because I am retiring.

Interjection: He always says that.

Interjection: We will believe it when we see it.

Mr. Watson: I figure at 72 it is time to quit.

Mr. Faubert: I have a similar problem as Mr. Morin has with this. Here we are faced with a request whose merits are beyond doubt. I think it is an excellent use of it, an excellent request. It is a project I think we all can support. But at the same time, we are trying to set some kind of policy for future use and I am one who is concerned about precedent. Actually, I am going to vote for this specific request but I want a clarification. Did Mr. Breaugh actually move also that we establish at some future meeting the policy for future use of the excess capacity of this transformer? I do not know whether he did that. If he did not, I would be prepared to do that.

Mr. Breaugh: I do not think it would be appropriate to wrap the two things together, but I think it would be a simple direction to staff to develop those.

Mr. Faubert: Exactly. It is very difficult to wrap two things like that together. That was my only comment. I will move that we refer that information back to a future meeting and discuss it aside from the actual application.

Mr. Chairman: Given the motion we have before us, and I want to clarify exactly what it is, the committee may want to ask TVO and the broadcast service to come forth with certain guidelines regarding the future use of it, which they might use in the future for some guidance, and if the committee is to make the decision today, to permit this group to have the transponder.

Mr. Faubert: To clarify one point, the suggestion was made, and it was a valid one, that if we are to set any policy it should be one that is quick so that we respond very quickly to any applications. We do not want to keep them waiting. I know there was an election in between this, but it seems it has to be a very streamlined process so you can say yes or no very quickly.

Mr. Morin: I hope you do not look at me as Scrooge before Christmas. That is not the point. It is just a concern that I have. I think our responsibility will have to be to define what is a nonprofit organization. God knows, there are an awful lot of nonprofit organizations that I would not support at all. Those are the ones I would like to define. I think this is our responsibility, to make sure. This type of organization I do accept, but there are other types I would not accept. What I am afraid of is that we may be flooded with requests, with all kinds of authorizations to use that channel. That is where we have to be careful. If we can define that, I will support your application. If we can define what is a nonprofit organization at a future date, I will support the request.

Mr. Chairman: If there are no further questions, I want to clarify the motion. I guess there are two aspects of that motion, Mr. Breaugh. First of all, you should have the time that is going to be permitted for use of the transponder, if that is your wish; second, no interference with Wawatay; and third, that there be no precedent, that this not be considered to be a precedent. There may be other aspects.

Mr. Breaugh: You are adding a whole lot of things to my motion that I do not have there and do not want there. First of all, the motion I would put is that the application by Whipper Watson CAT Scan Telethon on December 5

and 6, 1987, be approved. I did previously try to put on the record as clearly as I could that this cannot interfere with any previous commitments this committee has made for the use of that. Specifically, the Wawatay people need the system from five until six. So that is not part of the motion.

Mr. Chairman: My feeling is that it should be because--

Mr. Breaugh: Then every time in the future I put the motion to approve an application, I am going to have to say that it cannot interfere with the applications of Wawatay and Whipper Watson and whoever else uses it. I just want to approve this application and I want a clear understanding that it does not interfere with a previous commitment made by the committee. As long as they understand it, there is not going to be a problem. I think they do. They are all nodding in the right direction. Then I would like to put subsequent motions about developing some guidelines and processes and things like that.

Mr. Chairman: Okay. You have a motion before you. Does anyone want to speak to it? If not, all those in favour of the motion? Opposed?

Motion agreed to.

Mr. Breaugh: Now I would also like to make a request--

Mr. Chairman: You may stay if you wish or--

Mr. Breaugh: Yes, if you are fascinated by the process, you can stay, or if you have any brains left, you can get out now.

Mr. Watson: I am assuming I would want to wait and hear, knowing we can use your guidelines. Thank you very much, ladies and gentlemen. I really appreciate this. It is really taking the weight off our shoulders, not only for myself but I am sure for David who is the producer of the show and also the many people who are working with us.

Mr. Beer: I think we would say that Mr. Blackwell and Mr. Mitchinson would work out any problems and specifically ensure that we would be off the air before the Wawatay.

Mr. Chairman: Do not ask anyone on this committee to be pulling switches, pushing buttons or anything like that. We do not know what it is about.

Mr. J. M. Johnson: Just before you leave, on behalf of the committee, we wish you well.

Mr. Watson: Thank you very much.

Mr. Chairman: Thank you for coming, Mr. Watson, Mr. Blackwell and Ms. Allman.

Mr. Breaugh: Related to some things we discussed, I think it would be appropriate to ask the staff to do a little report for us. Mr. Mitchinson probably would head it up. I think the process worked. There were some unusual circumstances which made it lengthier than it ought to be. Frankly, what I want from the process is the report from TVO on their side of it and a report from our people on the technical side of it. I think it is this committee's job to establish the guidelines about who is suited to be using this. I would

like to see a little sorting process so that we do not get inundated with requests from people who might not be appropriate.

Mr. Morin: PTL.

Mr. Breaugh: Yes. I think we do have to do that. The problem I have is that the CRTC does make this a very complicated process about who can function and whether we have the proper broadcast licence and whether they have got it. I am afraid that whether we like it or not, we cannot get away from the regulation of the CRTC, but maybe what we can do is point out to people who are applicants that they need this kind of approval, to remove any doubt about that.

Perhaps what we need is a little better process laid out for people. This really is only the second group that has applied for the use of this capacity. I think we need to review the process to see if we could expedite things a bit and make clear all of the approvals people have to go through and then put those in place. Most of what we need to do we have probably already done. What is left is the decision-making by this committee as to who is an appropriate user of the excess capacity in our system.

Mr. Morin: Can you define any organizations?

Mr. Breaugh: I think that it is going to be very difficult to do. My view is that they have to be community-based groups.

Mr. Morin: Because you will have to say no to somebody.

Mr. Breaugh: Yes. It cannot be anything other than a nonprofit group. It has to be kind of a community-based group. I do not think it would be a useful exercise to try to lay out now all of the groups that are suitable or not. I think we could say that it would not be suitable to lend this system or this capacity in our existing system to someone to make money. I would go that far. Aside from that, I would be ready to entertain who might put an application before us.

Part of the reason I am hesitant to go into that is basically that the CRTC is the world's greatest example of rules, regulations and interpretations. I do not really want to add to their expertise in the field. I would just like a staff report on the process itself, outlining for people who might be making applications all the approvals they will need and this committee remains the decision-making body that decides whether it is an appropriate use of our system or not. We are the hell rental committee.

Mr. Sterling: I can understand Mr. Morin's concern about future groups. I just do not think we have enough experience yet to start setting down guidelines or putting restrictions on who might or might not use it.

Mr. Breaugh: Yes.

Mr. Sterling: In my own mind, I would sort of put an upset limit of the fact that if there are, let us say, getting on to be 10 or more applications per year to this committee, we may have to start considering some more formal process.

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We are politicians. We are able to make political decisions on these

things, but we have to say no sometimes and it may be tough to do it. But if we think it is going too far, we just have to do it. I know it is always difficult to do that at the time, but maybe that is when we should go into some more formal process. I just think we will go through a lot of work without having enough experience to really have a proper feeling on it.

Mrs. Sullivan: I too would like to see a staff report presenting proposals for refining the process, but there are other things I would like to see explored as part of that report. One of them is why, for instance, government agencies are not using this system now for perhaps a regional drug addiction program in co-operation with a youth organization or for cultural purposes to reach remote communities. I find that peculiar and I suspect one of the reasons is that agencies do not know the service is available, although there may well be a complication in relationship with TVOntario.

The second thing I would like to see explored and to know more about is the licensing requirements and whether this service could be leased. Whether or not there were financial implications to the Legislative Assembly, indeed a gift was made to this organization that had a value of \$13,000. It would be interesting to determine whether a leasing arrangement comparable to a commercial facility might be worth pursuing.

Additionally, I noticed in the current policy guidelines there are three areas outlined in determining the priority of applications, and the third does relate to a commercial interest. Today, the consensus in discussion has certainly focused on the public service aspect of the use of that channel, and I would like to see a further exploration of the implications of commercial application.

Mr. J. M. Johnson: I think, having taken this first step, we should request staff to monitor the situation closely and see what does transpire and what repercussions will come about because of it. I am sure there will be some. Then, after having a look at that report, we would be in a better position to determine what further use we should make of the facility.

Mr. Chairman: Those are all the people I have on my list. TVO and the broadcast and recording service have some guidelines for some general direction, shall we say, with respect to getting back to us with some guidelines. We can take advantage of the Hansard and see what we can come up with as soon as possible. OK?

For everybody's benefit, this being our first meeting of this parliament and the first meeting for some of you who are members of the standing committee on the Legislative Assembly, I will mention the people we have up front here at the head table.

To my left we have John Eichmanis, who is the library researcher. He is a full member of this committee in the sense that he is here all the time, and we can take advantage of his expertise in a number of areas. He has been on this committee for a number of years, dating back about five or six years.

Mr. Eichmanis: Since 1980.

Mr. Chairman: Since 1980, for seven years.

To my right is Smirle Forsyth, who is the clerk of this committee. He has been with this committee for 10 years. Longer?

Clerk of the Committee: Around six years.

Mr. Chairman: Six years. I thought it was longer.

Clerk of the Committee: It just seems like that.

Mr. Chairman: To Mr. Forsyth's right and to your left is Greg Putz, the Clerk Assistant from the Saskatchewan Legislature, who is on attachment to the office of the Clerk for the next week. So he has the benefit of what goes on in Ontario after this and he brings with him Devine greetings from Saskatchewan.

At the far end of the table is Hansard. I am not certain of this lady's name, but she or somebody else from Hansard is with us all the time to make sure that this is accurately and truly reported.

OFFICE OF THE ASSEMBLY

Mr. Chairman: The next item on your agenda and on mine is number 5, the proposed reorganization of the Office of the Assembly. We have with us the Clerk of the House, Mr. DesRosiers.

Mr. DesRosiers, do you want to come forward and briefly outline the question before us and respond with answers to some of our questions?

Clerk of the House: Thank you very much for inviting me. It is always a pleasure to appear before this committee. It always brings back a pleasant memory, I must say, of 14 months ago when this committee interviewed me for the position of Clerk of the assembly.

Mr. Sterling: I hope you remember who were the members of the committee at that time.

Clerk of the House: Yes, of course.

Mr. Sterling: I was.

Clerk of the House: During those 14 months, one of the things that has preoccupied me and has occupied me in discussion with the Speaker has been the reorganization of the Office of the Assembly.

Through many discussions, many hours and a lot of reading, and I guess looking over my past experience and so on, the Speaker and I have put together a package for your consideration. It is very simple; it is not a complicated organization chart. There are two basic principles. I will get up in a minute and show you the charts and illustrate the two basic principles that are behind this and how it is intended for this organization chart to work.

At the beginning of this exercise it was decided that we would not go outside, that we would not go the route of consultants or other means. We do have at our disposition the experience in this field that Westminster has gone through and that Ottawa has gone through.

To illustrate the problems that have been going on for close to 15 years now about the organization of administrative structures in democratic institutions, in the early 70s and before that in Canada, democratic institutions such as Queen's Park were run by the Clerk. Basically, they were very simple institutions to run. There were very few advantages offered to the members, and essentially what the Clerk had as a responsibility was to make sure of the procedure, that the chamber was well operated and so on and, in co-operation with the Speaker, he did that.

Just a bit before 1970 and soon after that, members and members' jobs when they were at Queen's Park and elsewhere mushroomed, developed very quickly and very widely. Therefore, it was felt by certain people that the Clerk was no longer equipped to bring forward the administrative expertise to manage a democratic institution such as Queen's Park, such as the House of Commons, etc.

There was a commission here in Ontario called the Camp commission, of which you are probably well aware. The result of that Camp commission was the creation here at Queen's Park of the position of Administrator. The Camp commission also created, I guess, the organization chart with which Queen's Park lived until very recently. That organization is based on the principle I just outlined, that the Clerk could no longer be held responsible for administration, that had to be handed over to the Administrator.

If you look at the organization chart that held forth here at Queen's Park until very recently, you will see a very lopsided organization chart indeed, because everything is on one side underneath a person called the Administrator. Then you have a box there that is called "Clerk of the House." It took me a while to find out what that box meant, but it was there. Then you have another box that is called "Director of Legislative Library." When I was hired here, I was hired under the premise and I was given the rank of deputy minister.

1700

I have lived experiences in Ottawa which are very similar to what has transpired here at Queen's Park. Up until 1979 in Ottawa the Clerk was very much in charge, and the same thing happened in 1979 as had happened here in the early 1970s. After the Camp commission, it was decided that the Clerk no longer should have the responsibility of managing the whole operation. Therefore, an Administrator was hired in Ottawa as well.

I will speak for Ottawa because I really was not here before I arrived. Therefore, I will address that in how I can see the proposed organization functioning.

Mr. Van Horne: You had better not have been here before you arrived.

Clerk of the House: I had a bit of trouble arriving here, if I remember correctly, but anyway.

In Ottawa what happened was that soon after the new organization was put in place in the late 1970s, early 1980s, members became disenchanted with that organization. For the first time in their existence, when they went with a problem to the person with whom they could most readily acquaint themselves, which is the Clerk of the House, they were promptly told by the Clerk of the House: "I'm sorry but I can't address that problem. You'll have to see the Administrator."

Members were really not used to this. For ever and ever and ever the Clerk had taken care of all their problems. Therefore, this did not go well at all with the members. Also what it did was create a great big bureaucracy which I contend really was not all that necessary, but anyway, that is what is there.

Along came the McGrath committee in 1984-85, by which time this discontent of the members was very evident, and what McGrath heard confirmed

this. What McGrath recommended in his Special Committee on the Reform of the House of Commons report was that the Clerk be once again recognized as an equivalent to the deputy minister and be the person responsible for all the activities at the House of Commons, and that is what is happening in Ottawa right now.

It is in the process, I cannot show you an organization chart, they have not designed it yet, but they have a new Clerk there in the person of Robert Mameau, who is playing that role right now. He is the head officer in charge of management of the whole place. He has to help him a Sergeant at Arms who is responsible for quite a sizeable chunk of the organization and he has an Administrator who is responsible for a sizeable chunk of the organization as well.

This brings us to Queen's Park and the problem here. As I said, I came here 14 months ago and have spent a lot of time thinking about this. In my career I had the chance to spend some time at Westminster in London, and what I am going to explain to you now is not something that I invented out of the blue. It is something that is reflected by what happens today and what has happened for ever--anyway, in recent modern history--at Westminster in London and what is going to happen again at the House of Commons in Ottawa.

I think we will just look at the chart here. This is the main chart and this is what it gives us. There are two principles attached here that are important to understand.

Mr. Chairman: Mr. DesRosiers, you are not being picked up by Hansard and it is going to be a problem. If you could move it closer to that table, that would probably be helpful. It is very important that posterity know exactly what you have said.

Clerk of the House: There are two basic principles attached to it. The first one is that if you look at these two boxes here, they were what made up the realm of the Administrator before. All that has happened here is that there has been attempt to isolate under a person who would be called the controller the two main control functions, which are finance and human resources. The secretariat to the Board of Internal Economy would be given to that person, as well.

The Clerk's office would add to its responsibilities in the sense that it would take over--it used to be under the Administrator--parliamentary public relations, which I feel belong more clearly in the Clerk's department. Aside from that, there are two other boxes that I will go into. Those are the journals and the committees.

The function of the executive director of the legislative library stays exactly the way it has always been. I will go into detail on the function of the executive director of assembly services, but in principle it takes over whatever is left there. As you may not be aware, I am in the process right now of negotiating with the Ministry of Government Services an agreement by which the Speaker is going to take over control of the whole building. That would need some help, so that would be under that person as well.

One principle here is that you divide the Administrator's position into two. But in that same principle, the important one is that you isolate the control function so that you do not mix the role of control and general administration. Those are very separate now, or they will be very separate.

The other main principle is a management principle. One of the problems

I noticed when I came here was that the Board of Internal Economy, with the Speaker as its chairman, would take a decision. A person who was acting as secretary to the board would take a minute to that effect and then that decision would plummet down about three rows on the organizational chart for execution. No one was following that decision through. No one was there to make sure, to check periodically on how the execution of that decision was coming along.

The solution there is a committee, call it what you will. At Westminster they call it the board of management. I think the first name we had here was the assembly management committee. It is a committee which would have as its members the Clerk as chairman, the executive director of the legislative library, the executive director of assembly services and the controller.

Those four people would be responsible for the execution of the decisions of the Board of Internal Economy. The way I was used to working, in Ottawa anyway, was by regular meetings every week with an official agenda. You go through every item which is on the agenda. That way, with representatives from all of the sectors, you ensure that some plan, some organization, some directive that was given by the board is being followed through. You can check and see where that is. Who is handling it? What reports are being readied? When will they be ready? etc.

The other role of the management committee would be to try to help the Board of Internal Economy in trying to develop, at its bid and call, policies for it to consider. Basically, that is the other principle behind this, that we need a tool by which we can ensure that management is being well taken care of and the wishes of the Board of Internal Economy are being executed in a proper and timely fashion.

Basically, that is what the proposal is. It is a very close reflection of what is happening at Westminster and what has happened at Westminster for a long time. You have that exact function at Westminster and you have different functions along this line at Westminster that we do not really have here and I am not suggesting that we should have, but the Clerk sits as a chairman of that committee under the Board of Internal Economy and basically that is the system that is at hand and it is the system by which Ottawa has been functioning, to a certain extent, in the latter years in the sense of the committee format.

1710

They have two committees. I am not suggesting two committees. I think one committee is fine for our size here. They are much bigger than we are and they have what they call an administrative committee and an executive committee. On the administrative committee sits the Clerk and the other upper echelon managers and on the executive committee you add the Speaker to that. What is being proposed here is that the one committee be formed of these people with the Speaker sitting in at his volition.

Mr. Sterling: The problem with that is it falls on the Clerk's neck--

Mr. Chairman: You will have to speak into the mike, Mr. Sterling.

Mr. Sterling: --in effect then the Clerk becomes responsible for basically all the problems.

Clerk of the House: That is right. In my opinion, that is what you hired 14 months ago.

Mr. Sterling: Therefore, if somebody has a complaint about food, you are likely to get it.

Clerk of the House: Sure. As long as there is an organization underneath the Clerk to deal with it, that is fine.

Mr. Van Horne: And the Speaker is off the hook.

Clerk of the House: I would not say that.

Mr. Van Horne: I say that in jest but you have made reference to the Speaker being there of his own volition.

Clerk of the House: He is certainly invited to all the meetings. If this comes through, I plan to hold a meeting of the management committee every Friday morning.

Mr. Van Horne: Given his place on this chart then he would have the power of veto. He is above you on this chart.

Clerk of the House: Very definitely.

Mr. Van Horne: Whether he sits in or not, if he does not like something, he still has that.

Clerk of the House: The powers of this committee are very limited indeed. It is a service-oriented committee and there is no other description for it because that committee has no real power on its own except to make sure that decisions of other people are well executed.

Mr. Sterling: Who is the deputy though? You are deputy minister in terms of your classification. Does the executive director of the legislative library then answer to you?

Clerk of the House: Well, "answer to me" are big words. I think that by level, that has not been the tradition and I will be very candid. It is something that I have not and purposely not addressed because I think it is for another body to decide that. I think that the executive director of legislative library has, in the past, reported directly to the Speaker and I have no problems with that. What I do wish though is for the executive director of the legislative library to participate in that management committee because I think it is highly important that, whoever that person is, we use that person's expertise.

On the other hand, I would wish that the executive director of assembly services and the controller do report to me for purposes of appraisal and for purposes of general management because the ultimate question is who is responsible?

Mr. Sterling: That is right.

Clerk of the House: And you used the words, "Who gets it in the neck?" I think I remember my words exactly and I did not invent this either. I do not invent many things. I think it is much wiser that way, but I was asked point blank by this committee when I was hired what type of Clerk I would be. I had sat on the McGrath committee for a whole year and there was just no way. I had lived through what I described as a sad period in Ottawa, and the need is crying out for someone who is in charge, someone that you can turn to and

say, "Well, why is this not working?" That might have been a reason for the problems we have had, yes.

Mr. Sterling: Is the executive director of the legislative library now paid as a deputy minister?

Clerk of the House: No. All these people here, there has been no--

Mr. Sterling: I am trying to get where these categories are. You are putting them on an even line with you.

Clerk of the House: This is an even line here; not with me, I am above that. I get a deputy minister status, which is above these people. These people are what is called in the government lingo--and I am learning that, too--ECP-4s.

Mr. Sterling: Well, that is clear.

Clerk of the House: Do not ask me what the ECP stands for.

Mr. Morin: Executive compensation plan.

Mr. Van Horne: Can I pursue something that--

Mr. Chairman: Mr. Sterling, are you finished?

Mr. Sterling: Yes, for now.

Mr. Chairman: Mr. Johnson and then Mr. Van Horne.

Mr. J. M. Johnson: Just for clarification: this committee made a decision a few minutes ago. How does that fit into the scheme of things?

Clerk of the House: This committee has very distinct responsibilities, by the standing orders. This committee can act as an advisory committee and does act in a very specific way when it relates to TV. Unless you, as members of the House, or you, as members of this committee, want to change the standing orders, you have the only power of decision with matters such as you have just decided, with matters such as the use of the TV, really, and that is given to you by the standing orders.

Mr. J. M. Johnson: We made a decision. Now you are talking about control coming up through the--

Clerk of the House: That decision would go automatically on to the agenda of the management committee, and that decision would be followed through to make sure everything is OK. The report, if necessary, would come up through probably this person here, because TV would fall under here, and come up to this person to the meeting. Therefore, if this was a long-term decision, if you had asked for something to happen in three months' time, this committee would have had many chances to verify that this thing was happening.

One of the unfortunate things that has been happening in this place, since I have been here anyway, is, whoops, all of a sudden somebody appears with a report. You look at it and say: "Oh, my gosh. Is this not nice?"

I will use the example of the play, Winds of Fire, that was given this summer. You say, "Well, that is nice." Then you go digging through board

reports and board minutes, and say: "Oh, yes. The board decided this a year ago." There has been no follow-up, and somebody comes up with something. It is just not the right way to operate things.

Mr. J. M. Johnson: At the present time, part of the House falls under the responsibility of the Speaker and part under the Ministry of Government Services. Is that correct?

Clerk of the House: As far as the buildings are concerned, yes. As far as responsibility, yes.

Mr. J. M. Johnson: Under this system, would the Speaker have control of the whole House?

Clerk of the House: That is right. I am in the process of negotiating now what the final agreement will look like. I am not in a position to tell, because I do not know myself yet. But definitely the intention is for the Office of the Assembly, underneath the Speaker, to take over administration of the whole building and the grounds outside. That means parking; that means use of the exterior; that means use of the building for other purposes, for protocol purposes or something; it means the maintenance of the building; it means the cleaning of the building; it means everything from A to Z.

Mr. J. M. Johnson: If that is the case, I would strongly support that, if the Speaker would guarantee he could take the ladders down some time in the next six months.

Mr. Sterling: The what?

Mr. J. M. Johnson: The ladders around the building. There is always construction.

Clerk of the House: Then you are in danger of the building falling over.

Mr. J. M. Johnson: Are you saying they are holding the building up?

Mr. Chairman: Mr. Breaugh, Mr. Van Horne, Mr. Faubert and Mrs. Sullivan.

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Mr. Breaugh: In my view, some would argue there is no management in this building at all. There is no co-ordination. There is nothing. So anything is better than the status quo. We seem to have a magnificent tradition around the building that people can build up fairly large staff and fairly large budgets, and they never have to talk to one another. I believe that is untenable. So I think we need to move in this general direction.

I have a couple of concerns that we might just as well try to rectify now. I am aware of what Ottawa tried to do and, in my view, failed to do. They came to two solitudes again, and so I have no wish to emulate that system at all.

The only problems that I have really with this kind of an approach--internally, it may be fine. One example is that I am not prepared to turn the security of the building over to someone who does not respond to this

committee--to be blunt about it. I am not prepared to turn over the security of the building to one person, like the Speaker. I am happy to do so on a day-to-day basis. I do not think any of us want to administer Queen's Park, but in a general way, our responsibility, in part, is to represent the members and to see that when the members have a problem, they can come before a group of their peers and resolve it.

I do not want the members appearing before this kind of committee arguing whether they can do this or do that. It seems to me that is highly untenable. So somehow I have to fit the relationship of this committee, as a standing committee of the assembly, in part responsible for the members, their services, the facilities, security and a range of other things, into this process. It does not quite fit.

The second thing is related to the first one. It seems to me that the role of the Sergeant at Arms, security and ceremonial stuff has been slotted in a couple of places here. For example, some of us visited the Quebec National Assembly and there the security of the building has essentially been placed in the hands of people other than members. Basically it is now a police operation. That would be totally unacceptable to me, as a member here. Although they have their own reasons why they have done that, I do not think that is at all appropriate in a parliament. It is certainly not appropriate in this Parliament.

I know that in my own caucus, there would be very strong reaction if that kind of security system were put in place; if I tried to tell my members that the security of the building had nothing to do with you, and they would have to go see the police. I do not think we have clarified at all the relationship of the Sergeant at Arms, the Ontario Provincial Police officers attached to the assembly and the process of security. Again, I think there is a need to think through a little bit more where there are placements of people, for example, what I refer to as basically a management committee. I do not object to that term at all.

I am not sure how the players got their place at the table, for one thing. I read the chart and I think I see one new position. I do not see any others in here that I can get at, except there is a building maintenance function here which is essentially done by the Ministry of Government Services now. So I would like to see a little comparing of what Westminster is doing, a little fleshing out of the Sergeant at Arms, the security and the ceremonial stuff and the controller's job. The biggest single problem that I have is the relationship of this standing committee of the assembly to this whole process.

I want to just conclude by saying that I do not think any of us have got a good answer here. We have certainly struggled with members who come to us and ask, "Well, do not you people look after this, that and the other thing?" Then you ask for a staff report on how the restaurant is run or how security is run. No one really does that kind of thing and no decisions are really possible, except things happen.

Basically, I am not disagreeing with the general thrust of what is being proposed. There are some parts that are left out, there are some that do not quite fit and I think we need a little better explanation. It is the word "controller" that strikes fear into my heart, especially when I see that the controller and some others are responsible for things that I know are going to cause--to be blunt about it, office allocation. There is nothing in this world that causes more trouble in everybody's caucus than the allocation of office space and who can use what. So I see some problems here.

I do not think we have a bad idea in front of us; we just have one that needs a little work, a little push and shove. If we can do that, I think we have something that will be--this place is in danger of getting organized.

Clerk of the House: Could I just address some of Mr. Breaugh's problems?

First of all, I think I am quite aware of your preoccupations and problems with how this committee here fits into the whole thing. In my experience, I have always had to deal with committees such as this one in the role it is playing today. A similar committee, an exact replica--what is a replica of what we will not try to determine--this same committee exists at Westminster and in Ottawa. In both places they have a role which is twofold. They have a link with the chamber. They are a committee, they are a creature of the House, and they are created in order to develop just exactly what you were talking to, this link with members.

Who else is going to do it? The board is not going to do it. The board is there to take the major financial and policy decisions that affect the whole. To a certain extent the Clerk can do it, but the Clerk is not a colleague. The Clerk is not a member. So therefore there is a difference there. The Clerk is a service person, he is not a member and that is very different.

So the role there is an advisory role in one part and that advisory role is to the House. It is very much this committee's role to listen to members, to listen to your colleagues and to recommend changes in the security structure. This committee did study the security structure in other venues last year. It is up to the members, it is not up to the Clerk or the Speaker or what have you to decide what type of security system we are going to have. There are very different types of security systems in the world of which I am very well aware, but it is up to the members to decide exactly what system you want.

There is a security system at Queen's Park right now and that is all I am saying this organization has to concern itself with, administering the security system that is there now. If the members want to change that, they have all the powers of this committee reporting to the House, the House debating a motion, the House debating a standing order change through the vehicle of this committee. Therefore it affects the whole system. I am just trying to allay your fears because this committee definitely has nothing to do with the members.

When you talk about the controller and the allocation of space and so on, I know your fears. I realize your fears about the main one and if I could find a better one, I would. Again, the controller is not going to act on his or her own to apply their own policies in this deal. They are there to apply policies that have been determined by the Board of Internal Economy. They are not their policies. They will not be there to allocate space, they will be there to manage the space once it has been allocated.

The normal process after an election is that a certain amount of space is made available to a certain party by a certain formula. That person will not be involved in determining how much space a party gets. There is another process that is followed there and this is no attempt to change those processes. This is no attempt to change the whips' or the House leaders' meeting after an election and deciding with the Speaker how much space is going to be attributed. But this person very much gets involved after that

space has been allocated and manages that space. This person very much gets involved in determining the amount of space needed for the finance branch, for human resources, for the clerks' department, for the library and so on. It is in that sense.

There are some very interesting things going on in this building right now and space is one of them. People around here have to very soon determine what the precinct of this building is, what the clientele of this building is. I am not going to decide that. We have people residing in this building who traditionally do not normally reside in legislatures. That will have to be addressed, not by your humble Clerk but by other people.

I am just saying that this person here is not in the decision-making mode as to who sits where. This person is in a functional mode once those decisions have been taken. So I have just tried to respond to certain of your fears.

1730

Mr. Van Horne: Mike has asked the question I was going to. However, I want to go back to the Sergeant at Arms and the security ceremonial thing and ask if that might not be elaborated on.

Clerk of the House: OK.

Mr. Van Horne: I have another concern. I guess it is the relationship between the Speaker and this new Clerk management advisory committee or whatever it is properly called. It was touched on earlier over a concern about the precedent and the principle of the previous item on our agenda. What do you do when you are asked for the train to be used or some other property of government to be used, for whatever reason? I look at the Speaker and think of a request that came to him earlier this year for washrooms to be open on a Saturday or Sunday for some public function in or around the building.

I guess, as members, we do not want to get hung up on that kind of detail. Yet, on the other hand, when a constituent from a legion comes and says: "What the hell kind of a place are you running down there? I can't at a certain time get into that building," then I think: "Here it is 1987 and we do not have answers. Maybe it is time that we really did sink our teeth into this thing." I do not see this being resolved today by any means, but certainly I think we should make it a priority to consider what you are asking and get moving on it, because we do have a need here.

Clerk of the House: I think Mr. Breaugh raised that as well and I did not address it.

The Sergeant at Arms is a traditional position in parliaments which has a definite ceremonial role and that is well described in our Sergeant at Arms role right now. There has never been at Queen's Park, to my knowledge, a strong administrative role. I mean, the Sergeant has never been given the responsibilities here as are given, for example, to a Sergeant at Arms at Westminster or in Ottawa, such as responsibility for maintenance of the buildings or responsibility for restaurants or what have you.

There is an attempt here to make the Sergeant at Arms two things, and I am addressing the present security system. If the members want to change it, that is another problem. But the present security system is a police-run

system, to a certain extent. Therefore, there is a need for a very strong liaison man here. The Sergeant does play that role. The Sergeant plays an almost exclusive security role within the chamber.

Mind you, there are a lot of guards who block any attempts of security before anybody reaches the chamber, but ultimately, it is the Sergeant. If some nut ends up in the chamber, there is nobody else there.

Mr. Van Horne: Either in the gallery or in the members' seats.

Clerk of the House: Well, there you are. Now, there is an attempt in this organization to give the Sergeant an administrative role over the pages and over the legislative attendants. Maybe not as much with the pages but definitely with the attendants, there is an attempt there to tie them in to a certain security role in the chamber, because security in the chamber is a lot of watching. That is mainly what it is, because the people who are there are already there.

So it is a question of making sure that matériel that comes into the chamber, for whatever reason, is at least noticed and watched. It is a question of being attentive and so on, so the attendants are being brought in there.

That is an attempt for the first time, I think, to give to the Sergeant at Queen's Park a certain administrative role. It has been determined that, for that administrative role, the Sergeant would report through here again for that part of his or her duties which deals with this administrative role. But for security measures and for security in the chamber there is a special status with the Sergeant at Arms at Queen's Park that links him directly to the Speaker.

The reason for that is a security reason. I do not want to know. I do not want to be involved in this, and people who are experts in security, which I am not, will tell you that in an organization such as this, the fewer the people who are involved, the higher the level of the security. So that is the reason for that.

Mr. Faubert: First of all, I think there is nothing wrong with the chart. I think it centralizes a certain administrative function that is obviously necessary. If you explain that, as a deputy minister, you are really the chief administrative officer in the whole place, in that sense it is valid.

I have one problem with your description when you said you had a better name for a controller. It is sort of a management principle that is followed that when you have people at a particular level you have a common title so that everyone understands the level they are at and how they report. Maybe you could call that person the executive director, administration or something, rather than a controller, and then it would follow in the line of whatever ECP-4s are. That is just a suggestion.

I have a couple of other items: This was answered in response to Mr. Breaugh's question, but I was not sure who you are advisory committee to. Now it is advisory committee to the House through this committee. Is that right, in that sense?

Clerk of the House: No. This chart here deals with the Board of Internal Economy.

Mr. Faubert: OK.

Clerk of the House: Your committee is there.

Mr. Faubert: That is where it does not show, so I am not sure--

Clerk of the House: And there is--

Mr. Faubert: We are off in left field.

Clerk of the House: You could draw a dotted line from this committee to the Speaker and to the Board of Internal Economy. It is an advisory function.

Mr. Faubert: Advisory to both. OK, that is fine.

The other row below that, which does not show on the chart, that has the building--it says, "Building Maintenance."

Clerk of the House: It would show under here.

Mr. Faubert: It shows under there. I assume, and the question was asked earlier, this means the precinct itself.

Clerk of the House: Right.

Mr. Faubert: The whole thing, including the grounds, and--

Clerk of the House: Exactly.

Mr. Faubert: We would establish a legislative precinct, is that correct?

Clerk of the House: Yes, sir.

Mr. Faubert: It does not exist now? It is not defined as such.

Clerk of the House: Every parliament has a legislative precinct.

Mr. Faubert: It does?

Clerk of the House: It is a question of defining it. That is the problem there.

Mr. Faubert: That was my question. It has not been--

Clerk of the House: It is going to have to be defined, and soon.

Mr. Faubert: It has not been defined in legislation?

Clerk of the House: No.

Mr. Faubert: So that will be done. That is exactly what happened in Ottawa. Through that system, the grounds and maintenance and everything would be actually contracted then, as they are in Ottawa, through public works, which would be through the Government Services ministry.

Clerk of the House: That is right.

Mr. Faubert: They also have the National Capital Commission thrown in, but we do not have that.

Clerk of the House: Thank the Lord.

Mr. Faubert: Thank the Lord is right.

One other thing is that I have a very serious reservation about the security here. Now there is that blind buzzer system on the doors, and that is not worth a tinker's damn. Anyone who is involved in setting up security knows that is no good. You have to see who is buzzing, and once you see who they are, they have already gained access to the building and they could be gone.

Clerk of the House: The answer to that is to see the Sergeant at Arms. He is your liaison man with the security people who work the system here. There is a new security system that is going in. It is a new electronic system which will replace the buzzers, the panic buttons that are supposed to be on desks around here but are not.

Mr. Breaugh: They are on the desks; they just do not work.

Mr. Faubert: They are just not hooked up. You can push them all you want and nothing happens.

Clerk of the House: That will be going ahead. Again, the Sergeant at Arms is the person who plays the liaison role.

Mr. Faubert: OK, but I take it if we approve this as is and that recommendation goes on, it is implemented by legislation. Is that correct? I am just wondering what happens.

Clerk of the House: No. This would not be implemented. The other item to be addressed is that there is an act of this Legislature, called the Legislative Assembly Act, which does determine certain positions in this place, and this is one more reason to amend the act. But I would not advise you to put anyone at this level in the act. It makes it much too complicated to change later on if you figure you have made a wrong move.

Mr. Faubert: Then the executives--the flow chart is not part of the act then?

Clerk of the House: That is right. You would have certain positions in the act, which are there now. The Clerk would probably remain in the act on a different condition after the amendment to the act has been made, but I cannot really see any other positions remaining there.

Mr. Faubert: Is not the Sergeant at Arms a legislative position?

Clerk of the House: Right. The Sergeant too.

Mr. Faubert: Yes.

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Mr. Chairman: One of the things with regard to security is the magnetic cards that would be helpful in the various spots. For instance, it is much more convenient if I come in the door down here than to have to walk way around. I know other people use it, but Mr. Faubert is right. All I have to do

is say who I am. You could get in by saying you are me and you would get in as quickly as I do.

Mr. Faubert: I get in just as quickly anyway.

Mr. Chairman: Or vice versa. Magnetic cards would be a way of resolving that.

Clerk of the House: Again, I say to you, Mr. Chairman, that you and your committee are in the best position to make studies of these things and to make recommendations. You have two groups of people you can recommend to. Nothing stops you from recommending directly to the Board of Internal Economy. After all, the board has asked for your advice in this matter today.

You can also be more forceful than that, because you have power here in the sense that you can make a report directly to the House, which the board cannot. Therefore you can get your colleagues in the House to go along with one of your reports, which are almighty here.

Mr. Chairman: In theory, that sounds great.

Clerk of the House: But theory is everything, is it not?

Mr. Chairman: In this instance, theory is nothing. I hate to disagree with you.

We do have the benefit of a member of the Board of Internal Economy on this committee. Before we hear from her, maybe you can respond to this question: If for some reason you cannot perform your responsibilities and your functions or you are ill or you are away in Singapore at a conference or in Hawaii or someplace, who assumes your responsibilities, with the same powers you have?

Clerk of the House: Right now there is no one.

Mr. Chairman: Who would there be under this system?

Clerk of the House: Right now in the present system, it is up to me to delegate to someone my signing authority while I am gone, if that is a necessity. It is a necessity, because if I am gone for three weeks, somebody has to sign the chits around here. If something does not happen soon, my arm will be worn out. I am signing everything right now and I do not think that is perfectly normal. It is time for some delegation, but the positions do not exist and the people are not there.

Mr. Chairman: Is there a deputy Clerk?

Clerk of the House: There is no deputy Clerk.

Mr. Chairman: Should there be?

Clerk of the House: That is something I am not ready to address right now. The act provides for a deputy Clerk, but not with the functions of your Clerk right now. There is a position in the act right now that is called First Clerk Assistant. I am not ready to recommend, at this point anyway, that position be filled, because this thing has to be thought out.

To answer your question directly, in the meanwhile it would be incumbent

upon me, in consultation with the Speaker, to delegate someone--obviously one of these three people here--my signing authority, my authority while I was away.

Mrs. Sullivan: I think what we are looking at here is really a proposal for a management structure that will facilitate the provision of services not only to the board but also to members of the Legislature, and that will provide those services with clarity, precision and efficiency. If you look at the previous structure, it really is an awful hodgepodge from an administrative point of view.

It seems to me the Office of the Assembly has to deal with extensive functional responsibilities, everything from the management of the building and services to the pages, the barber shop--possibly some day a hairdresser. Ultimately, these functions are going to have to address far more major questions relating to the renovation of this building and to items such as the extension of the computer system to constituency offices and so on.

It is very important that there is a management structure that is responsive not only to the Board of Internal Economy and to the Speaker but also to the members. It seems to me that is what the Clerk is attempting to put before us, and the board will be very interested in the responses of this committee in terms of whether this structure meets the ability to provide the services.

The Board of Internal Economy does set the policy and make the financial decisions and its relationship with the management committee is one I think could be explored further. Certainly, the Speaker is the chairman of the board. The board is an all-party committee of members, and that may be one area we want to explore in terms of making the management advisory committee a little bit more responsive to the board on an ongoing basis.

One of the other things it is important to address, which I would like the Clerk to speak to this committee about, is that the board clearly senses an urgency and has asked this committee to come back with its recommendation to the board by December 10.

It seems to me there are reasons for that urgency. One of the reasons is that the controller function does not exist now, and that function is one that has to be filled, to be addressed, to deal with a sophisticated series of responsibilities relating to financial and budget control of the whole Office of the Assembly operation. Perhaps the Speaker would like to address the urgency of the need for this sort of management structural change.

Clerk of the House: First, I would like to address one thing that you said, Mrs. Sullivan. This management committee is not an autonomous committee by any means. It does not have any power except to execute through these people. This is a term I like to use: "diffused management." In other words, everybody here gets to know what the others are doing. It has a power as a group over this group here, but it has no autonomous power over the whole building. It is not an autonomous being.

To address the question of urgency: This whole thing was started last winter--I told you a bit of a story about that--and this plan was pretty well ready to go in the spring. The Speaker approached the then board in the spring with this plan, but in a private manner, speaking to each board member individually to acquaint him with the proposal. It seemed at that time there was general agreement with it, but it was never presented to the board as

such. The board never met again. That is the reason it was never presented to the board. It just never met until the election.

Therefore, there was one decision that had been taken by the board by consultation with the Speaker, and that was to go ahead with the hiring of a controller through a subcommittee of this committee here. Came the summer and disappearance of people, then the election, then no committee. At a certain point in August a decision was made by the Speaker and myself that we could not afford to live without this person until possibly January or February if we waited for a new committee structure, and we did not know at that time when the House would be recalled or what have you. So we decided to go ahead.

That process had been started well before the election. An ad had been put in the paper with the intention of sending a short list to a subcommittee of this committee. It never got there. So here we were with this short list of people who had applied and who had been informed they were on a short list and then we had no more committee. Therefore, we decided to go ahead and interview. We have identified a person. The interviews were carried out by the Speaker, Brian Land, myself and Ellen Schoenberger. We interviewed six people and we have identified one candidate.

At this point, that candidate is on hold until a decision is taken on the process. There is urgency, because if I wanted to be the chief officer of this place--I tell you, I sure am because I am not washing the dishes, but that is about it. I am doing it all right now, but in fields, mind you, where I feel relatively competent to make decisions. But in fields where I am not competent--for example, I am not an accountant; an accountant I am not--I can make accounting decisions once a competent person puts alternatives in front of me, but do not ask me to write those books; I cannot.

I tell you when my name appeared on the cheques around here, I started getting willy-nilly, and there is nobody beneath me. I mean, it is a long drop down there. I am telling you, we are doing the job. We are covering every aspect, but there are areas of the organization here that need addressing, that need staffing, that need organization. We have got to start some place, and this person is needed; and right after this person, this person is needed.

As the member for Halton Centre (Mrs. Sullivan) said, there are some major dossiers coming before the board next month: Renovation of the building is coming ahead; space is going forward; definition of the precincts; transfer of control--the board will be faced with an agreement to look at to transfer control of the building to the Speaker.

That is all very fine to be in control but you have to have a few people to exercise it; and we do not have the people. So basically all I am doing here is responding to the member for Halton Centre and saying yes, there is an emergency. I think the board realizes this. I am asking you to consider it and report back before December 10. I am just trying to impress upon you that it is urgent and that we do need some help rather quickly.

Mr. Chairman: I have two more speakers and we have some other things I would like to deal with. We may have to go past 6 p.m. if the committee wishes; but if we want to shorten this up a little without sacrificing the basic decisions that we have to make, I would like to do that.

Mr. Sterling: (Inaudible).

Clerk of the House: I can identify at this point. We are not

building any empires; we are taking existing positions mainly. There is one basic new position and that comes from the split of the old administrative position into two positions.

You will say, "Well, that brings along more staff;" yes, it does. The administrator had three staff positions underneath him. We are projecting two staff positions here and two staff positions here, so yes there is an increase.

I can give you an approximate amount in figures.

Interjection: You would be going up by two positions.

Mr. Chairman: No member is going to lose his office because this controller wants an office?

Clerk of the Committee: No. We have identified space in the Whitney Block for the controller.

The cost of the administrators' position and staff was \$203,000 a year; the cost of each of these positions and staff will be \$157,000 a year, so we are talking about an increase of roughly \$100,000 a year in staff.

Mr. Sterling: Are we going to get a look at this controller, or have you already hired him?

Clerk of the House: We have not hired him. We have identified the person who as far as the Speaker, Brian Land, myself and Ellen Schoenberger are concerned is the most qualified for the job. That person has been so advised but there has been no hiring done.

Mr. Sterling: It is the tie between the--the way this appears on the thing is the Board of Internal Economy, anything that is done around here has to go through it. The Board of Internal Economy, in my experience over the past 10 years, has not had time or the inclination to really be involved in a number of issues that are important to the members around here. One we always get contradiction about is the food services--the security and on and on.

I do not know whether you can draw a structure which permits some kind of participation or routing to that management committee or whatever that will allow members to participate or see where the participation occurs. For instance, I understand in the federal Parliament, there is a library committee.

Clerk of the House: Which meets very rarely.

Mr. Sterling: Yes, but I guess there is a vehicle to deal with whatever issues may arise out of that in Parliament.

The other one has been raised by Mrs. Sullivan, and that is the long-term management of the physical building. It does not seem to--well, I guess it fits under the executive director of assembly services in this particular chart, because he deals with building maintenance.

I am not so certain that is not a structure. I mean, we have been wrestling with that problem for a long period of time. I do not know where we do it, but I just wonder whether it--I guess there would not be anybody who would be in charge of that and I guess I am not interested in creating a position of somebody who is in charge of the historical preservation of the building and the whole thing. I do not know where it is going to happen. I do

not know where we are going to get the \$100 million to fix this place up, unless we have some vehicle to push.

Clerk of the House: I think that fixing the place up is going to happen, but now we will be in a position to have interested people have a say. I think the most interested people around here have to be the members who have a say in what the building is going to look like.

But I repeat that this, and I was not being facetious before, I mean, this committee is probably best equipped to answer those details. The board cannot do it. The board has a full agenda right now and the board cannot address, on an initial level, the preoccupations of members with food services here.

I will tell you myself. I am very preoccupied with food services here. But I think that this committee, through reports, can generate activity and this is where members can come to the Clerk anytime. I am accessible. I am the accessible staff person. I am not the invisible bureaucrat in another building.

There is just one further principle that I felt that I have to explain to you. That is the difference between the old system and the suggested one. In the old you had the administrator who was secretary to the board and who played a function in that role as, to a certain degree, the decider of what was put on the board's plate at every meeting.

That disappears completely and anybody who feels--because there will be some items generated by staff, there will be some policy items that are generated by finance, by human resources, etc.--and that decision as to what is ready to go on, in that vein, to the board's plate will no longer be made by one person. The title here "secretary to the board" is not a decision-making title. This is an execution type of thing. This person has a secretary who executes, who copies the material that goes to the board and so on, and who prepares the agenda, but does not decide what goes on the agenda. That is decided by the board members, by the Speaker and by this group as a whole, and to a certain extent, by the caucuses through their caucus members on the board.

Mr. Faubert: Mr. Sterling made an interesting point about the building. I take it this is a designated historical or heritage property, is it not?

Mr. Sterling: I do not think so.

Mr. Faubert: It is not? So we have no one who is really responsible for the historic preservation of this building. There is no curator on site or anything like this?

Clerk of the House: No.

Mr. Faubert: What about all the artefacts that exist in here?

Clerk of the House: There is a person here--I forget the title and I forget the name of the person--who is responsible for the artwork that is on the walls. That person is not an employee of the Office of the Assembly, I do not believe.

Mr. Chairman: The Ministry of Government Services.

Clerk of the House: Yes. Everything belongs to MGS. That is something that has to be recovered.

1800

Mr. Faubert: That is a valid concern. This is like a living museum in that sense as well as a working building.

Mr. Chairman: Of course it is. It is very much a living--well, museum, I do not know.

Mr. Faubert: When I am waiting for my bus outside my office, I see all these throughout, all these artefacts that someone must have some control over.

Mr. Morin: I think the Clerk should be given all the tools and all the help he requires to do his job. I think this is a good layout. We have to start somewhere. It is better than what we had before. So I think we should correct the problems as they arise.

Mr. Chairman: Is the committee prepared to make a decision today? A recommendation should go forth before the December 10 deadline. If we are prepared to make a decision today, fine. If not, we can leave it until next week when we are going to meet again. There are still one or two other items I would like to address quickly if we might, but we should deal with this first.

Mr. Breagh: I have a little suggestion for you to consider. Frankly, I am not ready on behalf of my caucus to make that decision today, but I would like to strike a little steering committee that would prepare recommendations for next week's meeting, one from each caucus. The Clerk would be happy to assist us in that and the Speaker probably.

I see some problems here but I do not think it is totally unmanageable. Frankly, I am really concerned that this committee's role does not fit the system at all. The size of the problems that we are looking at about restoration of the building, security and things like that are things that I know I am going to hear about. I have already heard about them from other members in my own caucus and I know I am going to hear about them again.

I think with some adjustment we probably have something that we could work on and make a recommendation to the committee next week, but I would like at least a few days to kind of think about it.

Mr. Chairman: For those of you who are new members, what the committees often have done is to appoint a steering committee with the chairman and one member of each caucus. That suggestion of Mr. Breagh's is in line with what this committee did last year and has done in previous years and with what other committees have done. We could appoint a steering committee. I guess it would be up to each caucus to decide who that person would be. So if we are prepared to do that--

Mr. Breagh: I think it is important that if we are going to report next week, which addresses that serious problem, if there is some urgency to this, I think we have to name names now. So I would be happy to serve for my caucus, being the only one in the room.

Mr. Sterling, Mr. Morin and Mr. Breagh will be the steering committee and the chairman will sit, and I would hope that the Clerk would join us.

Perhaps we can invite you to our little meeting of the steering committee Monday or Tuesday and report to the committee on Wednesday.

Mr. Chairman: Why wait until Monday or Tuesday? Why not meet tomorrow? While we are here, we could decide to meet tomorrow at least for a few minutes to decide what we want.

Mr. Breaugh: Sure.

Mr. Chairman: Do you want to meet tomorrow for lunch? Do you want to meet over lunch?

Mr. Breaugh: I have no problem.

Interjections.

Mr. Chairman: We would just have a short meeting and decide on--

Interjections.

Mr. Chairman: Any particular time tomorrow? We could meet any time almost as far as I am concerned.

Mr. Morin: I am at your disposal.

Mr. Chairman: Would lunch be fine?

Interjection.

Mr. Chairman: Would you set a place? We will meet in the dining room tomorrow and you will find a place for us, Clerk. We will meet at 12 o'clock tomorrow in the dining room.

Mr. Morin: Twelve o'clock in the dining room.

Mr. Breaugh: Can you send out for something to eat?

ORGANIZATION

Mr. Chairman: There are still one or two other items we should discuss. The committee budget. What has traditionally occurred is you have some thoughts before you with regard to the budget, but what we have done in the past is to go in camera in the initial part of this. If you wish to do that, we will do that. We will have a motion to go in camera on this and then come back with recommendations possibly next week.

Mr. Breaugh: What I would suggest is that we put this over to the steering committee and let it make the recommendations. We have a budget that was approved for the committees last year to kind of look at so you have a bit of a framework there if you want to. But I would suggest that the easiest way is to let the steering committee, if it is going to be meeting anyway, take a look at that and make the recommendations to us after.

Mr. Chairman: That is probably a good idea. Does the committee agree with that?

Agreed.

The committee adjourned at 6:06 p.m.

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Publication

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

OFFICE OF THE ASSEMBLY

STANDING ORDERS

REQUEST OF NATIONAL ASSEMBLY OF NICARAGUA
ORGANIZATION

WEDNESDAY, DECEMBER 2, 1987



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)
VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Faubert, Frank (Scarborough-Ellesmere L)
Johnson, Jack (Wellington PC)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)
Sullivan, Barbara (Halton Centre L)
Swart, Mel (Welland-Thorold NDP)
Van Horne, Ronald G. (London North L)

Clerk: Forsyth, Smirle

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witness:

From the Office of the Assembly:

DesRosiers, Claude L., Clerk of the Legislative Assembly

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, December 2, 1987

The committee met at 3:50 p.m. in room 151.

OFFICE OF THE ASSEMBLY
(continued)

Mr. Chairman: I want to remind members that the meeting starts at 3:45 p.m. If possible, I would like to start on time in the future, because if the House can start on a regular basis, I suspect we can.

I remember when I first came here a few years ago I used to be on time and everyone else was late, so I learned very quickly to be late like everybody else. I am wondering, this being the committee on procedural affairs, if it could start relatively on time. Then it is fair to everybody.

The first item on the agenda today, ladies and gentleman, is the reorganization of the Office of the Assembly. This is a continuation of last week. You will recall that we had the Clerk of the House give a description of what currently is the organization and also had a chart before us as to what the organization is that is being proposed. Mr. DesRosiers, would you like to come forward? Do you not have your chart any more?

Clerk of the House: No, but I can get it.

Mr. Chairman: If you have questions from last week, the Clerk, I am sure, will be more than pleased to answer your questions. We finished after everyone had an opportunity to have their questions answered, but you have had additional time to take a look at the proposed chart and responsibilities and the new offices being created.

In addition to that, we have, as has been circulated by the Clerk, some proposed additions to the end of the section entitled Clerk of the House, exhibit 1/3/02. You have that in front of you. Are there any questions?

Mr. Breaugh: I have a little difficulty in proceeding with this right now. The committee did strike a steering committee. We met once, and we were to meet again on Monday or Tuesday of this week to see if we could get something in the way of a report to the committee, which perhaps could be acted upon today. That second meeting did not occur, so I have some problem in proceeding, as we now have it.

There are a couple of things we have to deal with. First, the structure that will be set here is rather critical to a lot of people who work in and around the building, not the least of whom are the members. I think we have to resolve two or three basic questions before we move to the structure that will be used to administer what happens in this building.

Personally, I am not anxious to move quickly on that. I would rather have something that is considered by a lot of people, on which a consensus is reached. It may take a little while to do that. I am interested in resolving whatever immediate problems must be done. It seems to me we did hear a

reasoned argument that there is a need for one more staff position and that we have some problems unless we move with that.

Rather than do something in haste today, which we will all regret for the next 20 years, I prefer to see if we could find a short-term solution and then consider for a while how the structure should be put together; for example, if it would resolve some problems, to strike the steering committee to hire the controller or fill that position. I understand most of the normal advertising for the position and selection process is down to the point where someone could be hired in a relatively short period of time. If the steering committee could assist in doing that and expediting that process, it seems to me that is an option we should consider.

The two or three larger areas of concern I have are in part addressed by the proposed additions to what is now being referred to as a report to the committee. Let me put them in what I consider to be their perspective of importance.

It is critical that we find a way to clearly establish who does what around here and, more precisely, to establish the role of this committee in all of this. In part, it is met by having a sessional report by the Clerk and by the Sergeant at Arms; so at least that avenue is opened up and explored and made a little more formal. I think that framework is there. It probably needs a little work on the wording and clarification of where this all fits in the great chart of things around here.

The other thing that has been brought to my attention by staff of our own caucus, and I think it is a valid concern, is where does it fit in this role of things? Just a brief discussion with our own staff indicates that it does not seem appropriate to them that they would be part of this management committee, but it is also obvious to them that they would be impacted very directly by the decisions made by someone, for example, who was in charge of computer systems here or security in the building or placement of staff in the building. They obviously want to at least know what is going on.

It seems to me we must now address ourselves to the concerns of the staffs of the three caucuses. This is a problem that could be resolved as simply as by saying the meetings of this management committee are open and members and representatives of the three caucus staffs could attend, so they could at least be aware of the decision-making process and what is being done.

There seemed to be considerable effort made to indicate that there would be minutes kept. Sometimes minutes will actually tell you what is going on at a meeting, but to be blunt about it, I get the minutes of the Board of Internal Economy, and I have been to their meetings, and the relationship between published minutes of the meetings and what actually occurs there is pretty vague from time to time. The minutes are terse. I believe that would be an accurate way to describe them. They are not in any great detail.

1600

I am open to suggestions here today as to how we proceed. If there is a crying need to fill a staff position, to create the one new position and to fill it, then I am quite prepared to strike a steering committee and to go through whatever kind of a hiring process is necessary to get the person on staff and operative as soon as possible. I think we need to hear from the Clerk, and perhaps from the Speaker, as to how urgent that need is, but I think that is something we can do.

If we want to spend a lot of time today on putting together the chart and the relationship of this committee, the Board of Internal Economy, the management committee and all of that, I suppose we could do that. The reluctance I have, quite frankly, is that for many of us, for me and for the staff of our caucus, this is the first time we have heard of this. It is unclear to us exactly how the pieces are going to fit together and how the decision-making process will occur. I do not think we have any raving objections to anything that is being proposed here, but there are unanswered questions about where everybody else fits in the process.

I would prefer, frankly, to do what has to be done in the short term to resolve problems in the administration here. I would appreciate a little bit of time on how we put together the final structure. I do not actually see a whole lot of problems, but that may in part be only because this proposal was introduced to me last week. We have had one little steering committee meeting. We were to have had another one but we did not. It seems to me that once a structure of this type goes in place, it does have a tendency to stay for awhile.

I would like to make sure that everybody has had a reasonable amount of notice as to how this structure will affect everybody else who works around the building. I think we need to clarify the relationship of this committee, a standing committee of the Legislature, to this decision-making process. I remain a little uncomfortable around the suggestions on security. I know that there are problems and I am not suggesting for a moment that this committee will be the day-by-day operation of security in the building.

I do not want that, but I do want, as one example, a type of security in the building that responds to the members and the fact that it is a parliament, not a warehouse. I do not want that security operation to be essentially a policing operation. There are others who will disagree with me on this, but I strongly believe that in a parliament it is not appropriate that it be run by the Ontario Provincial Police. I appreciate that we need their expertise, we need their advice, we need their day-to-day operational skills, but there are some fundamental decisions that would make this different from a normal policing operation.

With regard to other parliaments, I did take the time to find, for example, the organizational chart that is used in the federal Parliament. It is, to be blunt about it, far more detailed than what we need here, but there is the traditional lining up of how individuals in the administration of the assembly report to a parliamentary committee and how each of the players fits in. It is far more complicated than what we need here, I think, but the questions are answered. I think before we proceed much further on the larger question of how we set up the administration, we need to have a little bit of time and a little bit of notice to people. Maybe we can do that within the next week or so, but we have not been able to do that to date. That is where I am on this.

Mr. Chairman: As members know, there is a request before the committee that we deal with this and forward a recommendation before December 10 so that the Board of Internal Economy can deal with this matter. Whatever decision the committee makes is obviously not etched in stone and therefore can never be changed for the next 100 years. The committee can make a decision based on the proposal before it or make changes here. Then we could review it in the next year or two or three. We do not necessarily have to keep the Board of Internal Economy waiting for a definite or indefinite period.

The other thing is that I was under the understanding that the committee had dealt with this matter last Thursday and was going to go on with other matters. Obviously, there is some difference of opinion on that. But there is nothing preventing the committee from dealing with this matter today. Then, if some time in the future the committee wants to make changes, obviously the committee can.

Mr. Breaugh: I will respond briefly to that. That is not my understanding. I was here last week for the whole proceeding. I did not hear the committee say it would deal with it last week, nor did I see the committee deal with it last week. I heard the committee hear the presentation from the Clerk and talk briefly about it and decide to strike a steering committee that was to meet on Thursday at noon, and it did. It was to have met again on Monday or Tuesday of this week, and it did not. The purpose of that exercise was to present, if it were possible, a report to this committee today. Now the steering committee cannot present a report because it did not have its second meeting.

I appreciate the chairman's problem, but I would tell you--in not very strong language right now, maybe a little stronger later--I see it in much different terms than you do and I do not find that an acceptable way to proceed, frankly.

Mr. Chairman: The committee has a choice to proceed the way it wishes and maybe you have some suggestions. How do you want to proceed?

Mrs. Sullivan: Could we have an initial report, at least as a result of the first meeting of the steering committee?

Mr. Chairman: You have it before you. The question before the committee, as I understand it, was in what way this particular committee can be involved in the organizational chart, so to speak, which you have before you.

As you know, the committee does not come beneath the Speaker. If you look at the chart in front of you, there is the House and then the Speaker and the organization below it. There is no way you can kind of take an offshoot from this and put the committee in someplace because you are not an entity under the Speaker's jurisdiction.

As a result of that, the subcommittee last week recommended the following proposed addition to the end of the section entitled Clerk of the House:

"The standing committee on the Legislative Assembly has been authorized by the House to advise the Speaker and the Board of Internal Economy and to report to the House on the administration of the House and the provision of services and facilities to members. To ensure that the committee is kept informed of changes in the administration of the House and the provision of services to members, the Clerk, as chairman of the management advisory committee, shall meet with the standing committee on the Legislative Assembly on a biannual basis.

"The standing committee on the Legislative Assembly has also acted in an advisory capacity to the House, the Speaker and the Board of Internal Economy on security within the legislative precincts. To ensure that the committee is kept informed of the aspects of security involving members of the Legislature, the Sergeant at Arms shall meet with the standing committee on the Legislative Assembly on a biannual basis."

Obviously, we discussed those subjects. That is what was put forward by the subcommittee as a result of our meeting last Thursday.

Mr. Breaugh: I do not want to be stickly or obnoxious or anything like that, but I do want to put on the record that I saw those words for the first time yesterday, that the steering committee per se has never seen those words, has never considered them, has never adopted them by motion. That is a draft that was put together by the clerk of the committee. I saw it yesterday and most committee members have it seen it today. I do not believe it is an accurate portrayal of what happened to say that is a recommendation of a steering committee that did not meet and has never seen those words.

Mr. Chairman: It is true that you, as well as every other member, did not see it till yesterday, but that in essence, as I understand it, was the instruction we gave to the clerk last week after we met. The clerk was there and--

Mr. Breaugh: I do not want to be picky about this, but I will tell you the truth. In my view, we are--

Mr. Chairman: If you want to change some of this, Mr. Breaugh, make an amendment. First of all, we need it before the committee and, second--

Mr. Breaugh: OK, I am going to start getting very picky in a hurry here.

Mr. Polsinelli: Can I ask Mr. Breaugh perhaps what his anticipated time frame is? What do you have in mind in terms of how to proceed with this issue?

Mr. Breaugh: I am seeking, if I can get it, a reasonable way to proceed. I understand there is a staff problem. If that staff problem can be resolved by separating it out while we take a little bit more time to consider this structure, I am quite happy to do that. If that is a reasonable response that solves the problem for the Clerk and for the Speaker, I am happy to do that. Separate that one out, strike your steering committee, let it come back next week with a recommendation about who the staff person will be, approve that and get on with it. Maybe the steering committee could meet once or twice in the next week or so and go over the exact wording here.

1610

I am concerned, frankly, that we are going to set a structure which, however long it lasts, affects every person who works in this building, and I am not prepared to take a casual approach to that. I know the kind of headaches that will come up next week if--I suppose you can, if you want, vote this thing through, send it to the board and it will happen. Then the headaches will begin.

We, who are supposedly charged with assisting the Speaker and everybody else in setting up this kind of structure, owe it to ourselves to consider this. To give you the practical problem, I saw these words yesterday for the first time. I have had a chance to think about them and look at them a bit. With a little bit of wording change here and there and a little clarification, we are on the way to getting a resolution to the problem.

We can take some time this afternoon and do that. The reason I am a little reluctant is that there are other people who are affected by this and I

would like to have a day or two to go back and talk to caucus staff on how that would go.

Mr. Polsinelli: The Board of Internal Economy has referred this matter to us and has requestetd that we respond by December 10. Our next meeting would be December 8, I believe.

Mr. Breaugh: Yes.

Mr. Polsinelli: Would it be possible to deal with this matter on December 8?

Mr. Breaugh: I think so.

Mr. Polsinelli: I see no problem with accommodating Mr. Breaugh's request. It would satisfy the Board of Internal Economy if we dealt with this issue next week. It would be before December 10. It would give Mr. Breaugh an extra week to ponder the matter that has been put before us and check with any members of his staff and his administration he may want to check with. So quite frankly, I would tend to concur with Mr. Breaugh's recommendation, provided that he come to the meeting next week and be prepared to discuss the issue and perhaps reach some resolution of the matter.

Mr. Breaugh: It would also be very helpful if the steering committee actually met to consider the wording of the recommendations and how that is done, so that by the time we come here, we have some of the problems worked out.

Mr. Morin: Who is on the steering committee? Norm, yourself?

Mr. Breaugh: Mr. Sterling, myself, Mr. Epp as chairman and Mr. Morin.

Mr. Polsinelli: Perhaps, Mr. Breaugh, today we could discuss the employment issue. That is a question perhaps we could address to the Clerk.

Mr. Breaugh: If the Clerk feels that is a matter that should be dealt with expeditiously, I am quite happy to consider that.

Mr. Chairman: I would like to hear from the Clerk at this time. Do you have any comments with regard to that?

Clerk of the House: I have no problems with December 10. That is not a problem, nor what this committee wants to recommend and so on. I would just like to address some of the comments Mr. Breaugh has made and some of his concerns at this point, which might help you in your deliberations.

First of all, the urgency involved in addressing the staff problem: If you want to talk about that one position, the controller position, I think I made it clear last week that at this point, we have gone ahead. We have interviewed. We received roughly 150 applications for this position, of which a short list of six people was drawn up. These people have been interviewed and a person has been identified.

We are satisfied that this person would be a very worthwhile addition to the staff of the Office of the Assembly. Furthermore, I think we can undertake to this committee that this person was hired--not hired yet--identified on the basis on which we always try to identify people in this context, to make sure there are no political ties. In that sense, this person has a very good

background to offer in experience and so on and, I think, would be a very valuable addition indeed.

But that addresses only one of the staff problems. There is the other staff problem, which we have identified as the executive director of assembly services. There is a crying need to initiate that process. That process is not as far advanced. We have not even advertised for this position and we are waiting for the approval of our reorganization before advertising for this position, but there is urgency there as well.

As far as my appearing before this committee is concerned, as seems to be in the draft of the steering committee at this point, I want to make sure this committee understands very well that the Clerk of the House feels a responsibility to appear before this committee any time this committee so wishes. If the committee wants to recommend to the Board of Internal Economy that this should happen on a regular basis at least twice a year, I cannot agree more, because for the Clerk of the House it is highly important that he be in touch regularly with such a committee. It is very important feedback for the Clerk and for the rest of the administration here to know what is on members' minds, what are their preoccupations, etc. So I think that would be very worth while indeed.

Thirdly, I think there is one preoccupation that Mr. Breaugh has mentioned and that is the caucus staff. I am still relatively new around here and I must say that the caucus staff, as far as the reorganization is concerned, really belongs to the individual parties. They are the staff of the parties. They benefit from the administration of the Office of the Assembly as far as pay and benefits go and as far as they fall into that structure for their pay, for their benefits and so on.

But the administration of the Office of the Assembly has no say whatsoever in how caucus staff are treated by their direct employers and so on. The only people who do, in our setup here, are in the Board of Internal Economy. Caucus staff preoccupations are accessed to the Board of Internal Economy directly by caucus representatives on the Board of Internal Economy.

What I am saying is that this advisory management committee would not be preoccupied directly with the administration of caucus staff, other than ensuring that the human resources branch, for example, the finance directorate, are doing what they have to do in order to accommodate this staff. I am just trying to set that straight and set the record straight on that.

Mrs. Sullivan: I too would like to speak to some of the points that Mr. Breaugh raised. One of them relates to the referral to this committee of this item. I think it should be clear that the Board of Internal Economy could have proceeded without making this referral. That is part of the mandate of the board. The board thought it would be useful to have input and consultation from the standing committee relating to this reorganization, which is really an administrative reorganization, not a reordering of the policy process.

Mr. Breaugh has specifically mentioned, as part of members' concerns, items relating for instance to computer services. One of the things that should be very clear is that caucus members from all caucuses do in fact participate in decisions relating to the administration of the computerization. There are committees of caucus set up. The administrations of individual

caucuses do participate and are very clearly involved in making recommendations to the board.

In other areas, there are similar mechanisms for members' participation that are well considered and a continuing part of the process of the Legislative Assembly. That does not mean to say that this committee is not involved in discussion of those matters, but there is a different process for the most part in dealing with some of the specific issues Mr. Breaugh raised.

The staffing question is one that is, to my mind, a serious one. It is a pressing matter to have the Office of the Assembly appropriately staffed with people of the appropriate expertise. It is important that the board have the recommendation of this committee in order for those positions to be filled. There are functions that are not, in my mind, being appropriately handled now because people are not there to do them.

1620

Security issues will no doubt come before this committee as well as before the board through other processes. This is a management restructuring, not a process restructuring. There could have been an additional chart which would have had other aspects of the operation laid out and put forward. This chart is the management operation, not a process operation.

In terms of the hiring of the controller, I am personally satisfied that more than appropriate methods have been followed to this time in the search for that person. I do not believe this committee has to be involved any further in the interviewing process and the specific hiring. I think that is a functional responsibility of the Clerk. The involvement of the Speaker, the Speaker being a member, is one that has been very useful in that process as well.

I will agree that we can deal with this and hope for a decision from this committee next week. I think that is an appropriate thing to do and it does meet the request of the board. Mr. Breaugh's objections are really outside of what we are looking at in terms of this reorganizational chart.

Mr. J. M. Johnson: I would like clarification of the Speaker's role in this. As I understand, at present about half the building is under the control of the Ministry of Government Services and half under the Speaker.

Clerk of the House: That is correct.

Mr. J. M. Johnson: I fully support the thrust that the Speaker should have control over this building and also the grounds, parking lots, whatever. I do not like the idea of a split. Is there any problem in the Board of Internal Economy with that concept? You are on the board, Barb.

Mrs. Sullivan: No, the board welcomes it.

Mr. J. M. Johnson: They would approve that?

Mrs. Sullivan: Yes.

Mr. J. M. Johnson: I wonder if you could maybe give us some idea of how things would work with the Speaker in control.

Clerk of the House: Maybe I could use this meeting to have an idea

of what a future meeting with this committee could be, and then inform the committee on where we are at right now with that process.

About four months ago, the cabinet passed an order in council saying that the Clerk of the House and the Deputy Minister of Government Services should begin negotiations in order to arrive at a memorandum of understanding which would describe the control of the Speaker over the whole building. That process is well under way. At this point, in discussions I have had with the Speaker, quite extensive discussions, the negotiations are going on with MGS in order to arrive at a draft agreement that would then go before the Board of Internal Economy.

The cabinet gave us six months to do that. Unfortunately, some of the work could not proceed during the election period, but we can still meet the six-month deadline. The six-month deadline ends with the end of this month, but negotiations are well advanced and we are hopeful that we will have no problems in reaching an agreement.

The rest of the steps that are required are that, once MGS and the Office of the Assembly have an understanding on an agreement, then that agreement would go for our end of things to the Board of Internal Economy for its approval, to make sure that all the implications of that agreement are well understood. Then if that agreement is forthcoming from the Board of Internal Economy, that would open the way for me to sign that document with the deputy minister of MGS.

Mr. J. M. Johnson: You are in the process of hiring an executive director and a director of administration?

Clerk of the House: We are recommending the hiring of an executive director of assembly services and we have started the process of hiring a controller. We would not have an administrator per se because I think that is a misnomer. I think all branches under the aegis of the Board of Internal Economy and the Speaker participate in administering this place, so therefore an administrator is not what is called for.

I know there is a certain difficulty with the word "controller," but I have racked my brain and cannot come up with a better one. The intent, I assure you, is not to exercise control to a point where members and their caucus staff would have their hands tied in any way. It is control in the sense of making sure that the policies, as approved by the Board of Internal Economy, are well followed.

Mr. J. M. Johnson: Would that function change if we were to retain the status quo or if we were to go with the Speaker's control of the House?

Clerk of the House: What would happen with the Speaker's control of the House is that the Speaker needs even more, and this is going to happen.

Mr. J. M. Johnson: The personnel that you have--

Clerk of the House: No, we would not need any more personnel because what would happen would be that the Speaker would use the office of the executive director, the person we are calling the executive director of assembly services, in order to help him in assuming the control of the building; that is, the maintenance, the cleaning, the messenger service and all that comes along with the control of the building per se.

Mr. J. M. Johnson: This would be reflected in the Speaker's budget and decrease the Ministry of Government Services budget.

Clerk of the House: One of the effects of this agreement would be that the total budget of the Office of the Assembly would be increased and that part of the budget of MGS which went to maintaining this place would be decreased by as much.

Mr. J. M. Johnson: I guess the only other question I have now is that you interviewed 150 people with no political affiliation. Can that be true in Ontario?

Clerk of the House: I do not know, but anyway to our satisfaction. I must say I have been involved in interviewing and hiring people for a long time, and that is one thing, in this milieu, I tried to make very sure of and I am sure the Speaker tried to make very sure indeed. We are as positive as we can be.

Mr. J. M. Johnson: We encourage people to participate in the political process.

Clerk of the House: We encourage people to participate in management of democratic institutions.

Mr. Breaugh: Perhaps I could help us go through this. I am not sure whether I want to propose a motion just yet, but essentially it would be in three parts.

The first is that the steering committee be directed to report to the committee next week, essentially to approve the filling of the position of controller and secretary of the Board of Internal Economy. Basically, I think if the steering committee was given the courtesy of meeting the proposed candidate and having a little chat, I do not anticipate any problem and we could recommend next week that this person be hired to fill that and we could send that to the board.

At the same time, perhaps we could expedite the search for an executive director of assembly services by reporting next week on the process for doing that. The reason I do not think there is a problem here is that the Speaker asked the committee last July basically to fulfil that function. We had used that process before and it worked quite nicely. What you wind up with is you are sure that all the caucuses have had a chance to play some minor role and participate in the selection of these people. It is a recognition that these are servants of the assembly and in some way there should be a relationship between the standing committee on the Legislative Assembly and how these people get hired, so that at the end of it nobody can say, "Somebody got preferential treatment." It is a three-party committee.

We all agreed, for example, that the current Clerk of the House was the best choice and the process worked very well for us. I think it resolved a long-standing problem about how people get into their positions here.

So if I were to be moving motions, the first two would be to report next week with a recommendation to appoint the controller and secretary of the Board of Internal Economy. In my view, that would probably then go to the board and it could do that. Also, to report on a process for choosing the executive director of assembly services. Although that process is in an earlier stage, I think it would be useful to say the committee supports that

idea and supports the process. I have in mind there that the committee might kind of go through the short list on that one, as it did with the Clerk.

The third thing I have in mind is that I think it is possible, if the steering committee were to spend a little extra time on it over the next week, that we could report next week with a recommendation that the committee could debate and adopt at next week's meeting on the reorganization. I think that is possible to do and we ought to try to do that.

1630

Mr. Morin: As I recall, Mr. Breaugh, you were chairman of the committee at that time. The recommendations we had made were that we were to hire a Clerk, and also that we were to participate in the hiring of the Ombudsman; those were the only two.

My only concern with having to look over the expected candidates, this controller and the executive director, is that we would interfere in the process or in the organization itself. Are we creating some sort of precedent by saying that each time the Speaker hires someone, we have to interview him, size him up and see who he is?

I would myself prefer to retain that responsibility of hiring the Ombudsman and hiring the Clerk when necessary, but with the rest, give him the control. Let him make the decision to hire a controller; give him the decision to hire an executive director. He knows what he wants. That is what I feel.

Mr. Breaugh: If I can just respond briefly, I would say that it stops here. We are caught in the middle of the major reorganization of the assembly and all of its officers. Perhaps in normal times I would not even be suggesting this, but I do think at this time, with these two positions, it is reasonable and appropriate to have the committee participate in that decision-making process.

I am most concerned to see that at the end of it there will be no political parties here which can say: "We did not know what you were doing. You tried to pull a fast one on us there."

I think we have a process we have used and it has worked well; and we had a process in midstream we had agreed to use. Circumstances intervened a little bit. I do not see a big deal here. I think the steering committee could recommend next week that this person fill this position, that it go to the board and the person be hired. I do not see it as a big deal, either, that a process be struck for hiring the executive director.

I really do not see that we are actually interfering a lot in the process. For example, when we did the Clerk's position, I had some concerns: How do we go through all of these résumés from all over Canada and, as a practical matter, have a political committee make this decision? But in practice, it turned out that my fears were ungrounded. We used the human resources people to help us sort through that. We presented a short list of candidates to appear before the committee, and we made a decision in a relatively short time without any problem. I think that process stood us in really good stead.

I do not want to get involved in all the other nitty-gritty here but, because we are restructuring now, I think it is appropriate that we do that.

Mr. Morin: Then would you see any objection for the Clerk or the Speaker to decide on the choice of the controller or the executive director, introduce these two persons to us for our approval, not for the selection of the candidate; otherwise, it would become again that we would have to interview, go through the whole process we went through when there came a time to choose a Clerk. Why not leave them the prerogative of choosing, subject to the approval of this committee, these two people, subject to, and that is it? Why should we go through that whole process of hiring someone?

Mr. Breaugh: Because I do not think it is a big deal.

Mr. Polsinelli: I think both Mr. Breaugh and Mr. Morin make valid points. As a member of this committee, I would tend to favour Mr. Breaugh's suggestion. As the committee that is responsible for and, in a certain sense, has a say in what services a member is entitled to and obtains from this assembly, I think it is appropriate that it have a say in who the executive members of the House and the Legislative Assembly are.

I see the new position of controller and the new position of the executive director of assembly services as having a direct impact on the services to members, so I would have little hesitation in supporting Mr. Breaugh's suggestion. I do not think it would interfere with the process of choosing a number of qualified individuals. That could be done through the existing procedures, and those short-listed individuals could be brought to a subcommittee of this committee for an interview, just as was done in the past for the choosing of the Clerk. I have absolutely no qualms about that or problems with that.

That being said, I leave it to any other speaker.

Mr. Breaugh: We do always try to go by consensus in here, and I would really prefer to do that. I do not want to move motions that somebody wins and somebody loses. Is there a consensus? Could I ask if there is a consensus?

Let me try to break it down into three parts: Is there a consensus that we would meet with the proposed candidate for controller and report back next week? I really believe that there is not going to be a problem here and that the committee will be quite satisfied with the proposed candidate. It is simply extending, as a courtesy to the committee members, that they are introduced and that they participated to that limited extent for that. Is that an agreed-upon way to proceed?

Mr. Chairman: The committee has an important decision to make here. If we are going to get involved as a committee in the hiring of these people, we have to make a decision whether this is going to be a precedent for the future or whether it is absolutely only a one-time occasion since we are going through the restructuring of the Legislative Assembly. If it is going to be a precedent, then how far down do you want to go? Do you want to go below those positions, too, or do you want to stay at that level?

Second, how does it jibe with what Mr. Morin said earlier with regard to--last spring or whenever it was, the committee decided it was only going to get involved in the selection of the Ombudsman and the Clerk. Now you are saying you want to get involved in other positions. Is the committee six months from now going to say, "Yes, but we want to get involved in the secretaries, too," and so forth down the line?

I think it is important that the committee clearly set out the criteria it wants to establish and then stick with those criteria, not change its mind six months from now.

Mr. Polsinelli: Mr. Chairman, you have raised a good point. I think perhaps what we should do is leave this as an item for next week's discussion, but what I would think we should do is set out the positions on which this committee would like to have some input into who is going to fill them.

Looking at the organization chart of the Office of the Assembly, in my mind it would be evident that the committee would want some say as to who the Clerk is going to be, and that has been decided already; who the executive director of the legislative library is going to be; the executive director of assembly services and the controller and secretary of the Board of Internal Economy. Without giving it too much thought, I think the committee should at least limit its input to those positions because those are the executive members of the administrative structure of the assembly.

I think it would probably be a good idea for us to think about this during the next seven days and come to have a full discussion on it next week and come to a conclusion at next week's meeting.

In the interim, since I believe a decision has been made with respect to the office of the controller--

Mr. Chairman: The executive director of the library is here, as you know, Mr. Land.

Mr. Polsinelli: Those two decisions have been made. Perhaps Mr. Breaugh's suggestions could be adopted, as a courtesy perhaps, until next week's meeting; that is, that a subcommittee of the committee be introduced to the proposed controller candidate and to the executive director of the legislative library, and that next week we have a full and frank discussion as to how far this committee wants to be involved in the actual choosing of the executive of the Legislative Assembly.

From my point of view, though, I think those four positions would be positions that members of this committee should have a say in.

Mr. Chairman: So that we do not go down the wrong road, I want to go back just a moment to what Mrs. Sullivan said earlier. She indicated to us that the board had extended this recommendation to us and we could recommend back to it a particular chart, make some changes and so forth. We have to keep in mind, as I understand it, then--I do not have before me the directive from the Board of Internal Economy, and correct me where I am wrong--that all we can do is recommend. We cannot make any changes or anything else.

It is moved by Mr. Cooke and seconded by Hon. Mr. Patten and agreed that the matter of the proposed reorganization of the Office of the Legislative Assembly be referred to the standing committee on the Legislative Assembly or a subcommittee thereof and to have a report back to the board no later than December 10, 1987, or earlier, if possible.

Mr. Polsinelli: All we have ever been able to do is recommend. I concur with Mr. Breaugh; I think our recommendation should be on the matters that the board has requested and include within those recommendations these other matters that were discussed today. It is up to the board whether it wants to adopt our recommendations or not. There is no dispute as to the

authority of the Board of Internal Economy, as there is no dispute in our ability to recommend things.

1640

Mr. Chairman: I just want to get it clarified, because I think I heard somebody earlier say that we would approve them or not approve them. I guess that is where I misunderstood, because I think I heard someone say "approve or not approve." "Approve or not approve," in my opinion, was approve or not approve, not "to recommend."

Mr. Faubert: As a new member of the committee, I want to be assured down which garden path I am being led.

Mr. Polsinelli: Smell the roses.

Mr. Faubert: There are a few things that go around the bottom of the roses. My father always used to say: "Do not step in that stuff. You will ruin your shoes."

What happens if we interview? We are not specifically interviewing. I take it we are being introduced to the choice that has come through the interview process. What can we do other than just say yes? We do not have a yes or no, aye or nay; we merely concur or not. What happens if we have strong objections, and why do we put ourselves in the position of doing that? I am at a bit of a loss as to why we are even moving in this direction.

Mr. Morin: It is the decision of the steering committee.

Mr. Faubert: We do not hire.

Mr. Morin: No.

Interjection: And we do not fire.

Mr. Faubert: We do not fire, right.

Mr. Chairman: Are you finished?

Mr. Faubert: Yes, I am finished with that. I just want that clarified.

Mr. J. M. Johnson: Does this committee have authority from the House to do some of the things we are talking about, to interview people and to hire?

Mr. Breaugh: As a matter of fact, on a small point of order, the committee--and you will find motions in the committee's minutes--struck a subcommittee to do precisely this last July, and that was in order at the time. More than being in order, it was at the direct request of the Speaker. So the records show that the committee has already dealt with this matter. The committee struck a subcommittee that was for purposes of interviewing people who would be recommended for this controller's position and others. That is on the record now.

I am bending over backwards to try to get some consensus here and getting a little frustrated that there is some silliness around the edges. I am not asking to interview anybody's secretary. I am asking that the committee fulfil a job it said it should do at the request of the Speaker last July. I

am trying to be as accommodating as I can. We are talking about two very specific positions here.

Mr. Morin: --last July.

Mr. Breaugh: I know.

Mr. Cordiano: Just to clarify a little further these two positions, that brings into question the whole precedent-setting that we are talking about. In fact, we would have to limit that at some point, so I think it is fair to try to clarify that and to try to set a precedent. Because we are setting a precedent, we should be clear about exactly what we are setting that precedent for and what positions this committee will entertain for its purview.

Interjection.

Mr. Cordiano: There are two, but as far as I see on the chart, you could probably argue that there are two more that indeed would be as justifiable as the other two that would come under consideration by this committee. I think there is a question of precedent-setting here, because how could you argue that we certainly would not have any one of these positions come before this committee after indeed we have the controller and, I believe, the executive director of the legislative library? Is that correct?

Mr. Chairman: Yes, he is here.

Mr. Cordiano: I assume the executive director of assembly services is going to come before us as well.

Mr. Chairman: Just to be clear on this, of course we have the Clerk and we have the executive director of the legislative library, Mr. Land, who is in the audience.

Mr. Cordiano: So that has already been done in the past.

Mr. Chairman: He has been here for some time. It is just that some jobs are new here. Some new positions are being created and some positions have already been filled for a good number of years. Mr. Land has filled this position for at least 10 years.

Mr. Polsinelli: It is not that we want to review the existing positions. We are discussing when the positions become open. At that point, should the committee have a say?

Interjection: That is what we are saying.

Mr. Cordiano: In effect, you are saying that this entire lower level of the chart could indeed become the purview of this committee at some point. I could argue that one, though. I could argue that if we have some input into the controller's position, then we should certainly have input into that of the executive director of assembly services at some point, if that position were to become available.

I think this is what my friend Mr. Polsinelli was saying earlier, that we have to be clear about the kind of scope we take with this and how far we go. I have no problem in what you are saying, but I think we have to further define just what it is we are going to deal with down the road as a committee. If we have done that, then certainly we can proceed.

Mr. Chairman: We can continue on with this, but is there some consensus building with respect to what you want to do on this?

Mr. Breaugh: Let me try it one by one then if you want a motion: The steering committee meet with the proposed candidate for controller and secretary of Board of Internal Economy with a view to reporting back that the recommendation go to the board that that person be hired at next week's meeting.

Mr. Cordiano: If we are doing that--

Mr. Polsinelli: Could you repeat it. Mr. Cordiano and I were having an ancillary conversation.

Mr. Breaugh: I know that.

The suggestion is that the steering committee meet with the proposed candidate for controller and secretary of Board of Internal Economy with a view towards making the recommendation to the board that that person be hired at next week's meeting.

Mr. Polsinelli: Carried.

Mr. Chairman: If we are going to deal with that, what are we going to do with the executive director?

Mr. Breaugh: I want to do it one by one and you keep trying to roll them all in.

Mr. Chairman: No, before we make a decision on that, I think it is fair to the members of the committee to know what is coming up with the other position because they are both on the same line.

Mr. Breaugh: I am trying to tell you the three things I want to propose. That is the first one.

Mr. Chairman: OK.

Mr. Breaugh: The second one would be, very simply, that the steering committee report back next week with its recommendation on how the process would work to fill the position of executive director of assembly services. We deal with that at next week's meeting.

The final recommendation that I would make is that the steering committee meet and come back with a recommendation on the administrative structure and that reorganization at next week's meeting. Those are the three things I would like us to do.

Mr. Polsinelli: I agree with what Mr. Breaugh is saying. I would add a fourth item, that at next week's meeting we also decide which of the other positions this committee should have input into.

Mr. Breaugh: Sure; that is fine.

Mr. Polsinelli: As you have already taken, for example, some action with respect to choosing the Clerk of the House, I would say that we define which positions in the Office of the Assembly this committee would like to have input into.

I am just looking at the organizational chart. I would say again that it would be my opinion at this point that the committee should have a choice or a say as to who would be the Sergeant at Arms when the existing Sergeant at Arms should decide to retire, who would be the Clerk of the House when in 30 or 40 years' time Mr. DesRosiers decides to leave us and who the executive director of the legislative library would be when our existing director decides to leave.

Mr. Breaugh: That is fine.

Mr. Polsinelli: There are those four or five positions and we could make a decision next week, not with respect to the existing positions as they are now, but with when they should become vacant and whether this committee at that point in time should have a say with respect to those positions.

Mr. Breaugh: I agree with that wholeheartedly because I think that all you have done is simply say that advice of the standing committee on the Legislative Assembly should be sought when these senior positions are filled. It is understood that we are not doing the hiring, but somebody does us the courtesy of seeking our advice.

Interjection.

Mr. Breaugh: No, that is right.

Mr. Morin: That is the same thing I said.

Mr. Breaugh: Yes.

Mr. Morin: That is exactly what I--I did not phrase it the same way, M. Breaugh.

Mr. Breaugh: I know.

Mr. Morin: I would like to direct my question to Mr. DesRosiers. Has there been an executive director chosen, a candidate chosen, yet?

Clerk of the House: No, Mr. Morin, we have not initiated that process yet. We are in a hurry to initiate it.

Mr. Morin: That is right.

Clerk of the House: We are waiting for the Board of Internal Economy's approval of the organization chart and of that position before we initiate that process.

Mr. Morin: Then the only recommendation we could make next week is to go ahead with a controller and then the executive director--

Interjection: Initiate the search.

Mr. Morin: Initiate the search, tell you to go ahead and then introduce this person to us next time.

Mr. Cordiano: Approval of the restructuring, reorganization and follow up on what Mr. Polsinelli said. So those four items; I think that is clear enough.

reorganization and follow up on what Mr. Polsinelli said. So, those four items. I think that is clear enough.

Mr. Breaugh: I think we actually have an agreement.

1650

Mr. Chairman: I have to get some direction. If this motion passes, with regard to the introduction of the controller, would this be done in camera?

Mr. Breaugh: Yes. We have always done such matters in camera.

Mr. J. M. Johnson: If we get into this process, that we have a say in the selection or hiring of these people, do we also have a say in the firing of them? I am a bit bothered by the area we are getting into. I sat on the Board of Internal Economy for several years. I always thought it performed quite well in the best interests of all members. Each party has membership on it. According to the numbers, it is not too far off.

I do not really see what we are getting into. It seems to me that if we have a problem, we take it to our individual member on the board to represent our concerns at the board.

Quite frankly, I am not all that impressed with the idea of interviewing people to determine whether they are the ones to hire in the best interest of members. It is a heck of a lot more work than simply having a half-hour meeting with them.

Mr. Breaugh: When was the last time anyone got fired around here, Jack? Maybe 1830.

Mr. Morin: The Clerk mentioned a minute ago that he would not have any objection to meeting with us twice yearly to discuss some of these problems. Perhaps if it was necessary, if there was a person who did not do the job properly, nothing would prevent us from calling the Clerk to appear before us so we could lodge our complaint. It is part of our mandate.

Mr. J. M. Johnson: That is certainly quite acceptable, but I wonder if we are not heading in the direction of the American Congress, where the President selects a judge and then Congress can veto it.

Clerk of the House: I just wanted to comment on this business of my appearing before the committee. I can only repeat that I am ready to appear as often as you like. The process around here calls for the Clerk to appear at least once, as it is, for estimates purposes. If there are supplementary estimates, it is more than once. If this recommendation goes forward, there will be another two times we meet. This can be 10 times a year.

I just want to impress upon you that it is an important part of the Clerk's position and duties to make himself or herself aware of what the members of this institution are actually thinking and talking about. That is highly important. I cannot welcome them any more than I am saying right now, that these meetings are necessary.

Mr. Chairman: If there are no further speakers or questions, we have a motion before us. It has four parts in it. We should vote on them separately.

The first motion was with regard to the position of controller, that he or she be introduced to the committee next week by the Clerk at an in camera session. This was not part of the motion, but it was later established that it be an in camera session. All those in favour? Opposed?

Interjection.

Mr. Breaugh: I think you have the sense that he wants to see if he can ruin it by means of voting on a motion.

Mr. Chairman: I am just trying to find out whether there is anybody opposed, because some people expressed reservations. Does anybody object to the motion?

Motion agreed to.

STANDING ORDERS

Mr. Chairman: Item 2 deals with provisional standing orders. You have before you a memo from the Clerk dated September 30.

Mr. Breaugh: If I could, Mr. Chairman, I informed you before the meeting--some of the members may know and some may not--that there has been a recommendation from the House leaders that has actually sought out someone to represent each caucus to talk about the broader principles that were in the fourth report of this committee on the standing orders and basically to talk about the broader principles of the legislative calendar and things of that nature. That committee has met on two occasions. It has a little bit more work to do, but it will report back to the House leaders by next week some time.

In addition to that, this committee previously had before it recommendations from the clerk of the committee on wording changes, alterations to a great many smaller parts of it, and so the review of the standing orders is proceeding at a number of levels.

I think the options that are laid out here are quite correct, but there may be some further revision to it. If, for example, the House leaders cannot get agreement on some of the other changes that should be included, in addition to what was done in the provisional standing orders, I would imagine they would want them included. I think that particular matter should be taken as notice. When the House leaders have met and we see whether there are bigger principles that have to be addressed, or whether we are basically cleaning up the existing standing orders, we can then proceed with that.

I am mindful that there is not a whole lot of time, but I am hopeful, working with the steering committee that is going to recommend to the House leaders, that we are near consensus on the matter and should be able to meet our timetable. Then the committee itself, because it is familiar with these matters and made the recommendations that are contained in that report--there is nothing new as far as this committee is concerned, but for those who have not had a chance to read that memorable report, it is the fourth report of this committee on the provisional standing orders. It contains some of the things that were adopted and put into the provisional standing orders. There are some other matters that will also be considered. I think that at this time we will just table this and take it as notice, and when the House leaders report, we will be able to proceed.

There is not much sense in proceeding with the wording changes, I would say, until we determine whether or not there will be further principles addressed by the House leaders.

Mr. Chairman: Are there any comments or questions? If not, we can defer this until another meeting, at which time we will have more information, probably from the House leaders. There may be a presentation from the House leaders at that time.

REQUEST OF NATIONAL ASSEMBLY OF NICARAGUA

Mr. Chairman: Let us go on to item 3, "Referral from the Board of Internal Economy--Request of National Assembly of Nicaragua for equipment and grants for English courses."

The minute, as I think you have before you, reads with regard to the request for equipment and grants for English courses by the National Assembly of Nicaragua:

"Moved by Ms. Smith, seconded by Mr. Riddell, and agreed, that this item be tabled pending submission of a report by the legislative library. The library's report shall include an outline of the ramifications of the two requests and an assessment of whether action on one or both of the requests falls within the mandate of the Board of Internal Economy."

There was another board meeting on November 23, at which time it was decided as follows:

"Moved by Ms. Smith, seconded by Mr. Cooke, and agreed, that parts (a) and (b) of this item be referred to the standing committee on the Legislative Assembly with the request that the committee review the matter and report any recommendations to the board."

That is what you have before you. You have some other information on board minutes, correspondence, precedents and so forth before you, which you now have an opportunity of quickly perusing and discussing.

Mr. Breaugh: If I could, Mr. Chairman, I had a chance to go through the report from the legislative library. It seems to me what it says is that it is okay to do this; you have to make up your mind whether it is desirable to do it or not. I think it would be useful for us to take a little time to peruse that.

But I am also mindful that it would be rather unusual for us to proceed any further without giving Mr. Johnston the courtesy of appearing before the committee and making his argument as to whether this is a desirable thing to do or not. It seems to me that is probably the reason why the board referred the matter here finally, because the board has done its work in gathering up whether it is appropriate, procedurally correct or that kind of stuff. It seems to me the answer to that is yes. It is just a question of whether you want to do it. That being the case, I think we are in a position to invite Mr. Johnston to attend the next meeting or maybe the week after and we will be making a recommendation on whether that is a reasonable and desirable thing to do.

1700

Mr. Chairman: Mr. Johnson, you had your hand up.

Mr. J. M. Johnson: Mr. Chairman, I--

Mr. Chairman: I might clarify, for the benefit of the camera, that you are not the Mr. Johnston whom Mr. Breaugh was referring to earlier.

Mr. J. M. Johnson: I do not think a committee of this Legislature should be dealing with items of this nature. I do not want to even refer to a particular party; I just feel it is a federal matter and certainly not something that should fall into the realm of a committee of the Ontario Legislature.

If indeed the provincial government does want to deal with it, then it should be through the Ministry of Intergovernmental Affairs and not through this committee. This is the first request, but possibly we will have many more, and I do not feel qualified to make assessments based on the merits of each individual case. I feel it is beyond our jurisdiction.

Mr. Breaugh: Would you have any objection to having Mr. Johnston appear?

Mrs. Sullivan: First of all, I want to put on record congratulations to the library with regard to the report that was done for the board's use and which will be useful for this committee as well. I thought it was quite thorough and raised a number of issues that would otherwise have been raised in our discussion.

One of the things that struck me about this was that I really felt we had to put this kind of request into a context. An informal request or a formal request of this nature is something that is very difficult for members to deal with without having an appropriate policy or a context within which to put the argumentation.

In thinking about that further and in other discussions with people who have been involved in situations like this before, it is very clear that from time to time there can be twinning arrangements, Legislative Assembly to Legislative Assembly. It seems to me that kind of context is the kind of context in which this particular request could be considered. As far as I understand, we have not done that at this Legislative Assembly, although that has been the tradition and has been done in other assemblies, including, I understand, Canadian Parliament.

I think it would be useful for this committee to consider whether it is appropriate for this assembly to proceed in that kind of way and then put this particular request into the context of a formal twinning arrangement that is assembly to assembly, not perhaps assembly to a group or in another situation. I thought that might perhaps help Mr. Johnson with his concern as to jurisdiction, for instance.

Mr. Breaugh: Is it not a reasonable request for me to ask the committee to give Mr. Johnston the opportunity to appear and make his pitch? It seems to me everybody has done the background work, we have the homework and all of that. It would be kind of unusual for us to deal with the matter in his absence.

Mr. Morin: I see no objection to Mr. Johnston appearing before the committee in camera.

Mr. Breaugh: I do not know why.

Mr. Morin: There is some good reason for that.

Mr. Breaugh: If there is, OK.

Mr. J. M. Johnson: Surely we can deal with one item today.

Mr. Breaugh: There is a lot of inexperience showing up among the members here. They certainly have not been around very much and they need to get out and see how other jurisdictions do things, that is clear.

Mr. Morin: I reserve my comment, which I do not share all the time.

Mr. Chairman: I think the proposal has been made that we recommend that Mr. R. F. Johnston, the member for Scarborough West, be heard in camera. If that is the case, when do you propose we do that?

Mr. Polsinelli: The first part of next week.

Mr. Chairman: So we will deal with the first two items in camera next meeting.

Mr. J. M. Johnson: Is there any urgency in this, Mike?

Mr. Breaugh: I am not aware of it, but Richard--

Mr. J. M. Johnson: Why not make it in two weeks? We do not want to have too much next week or we will never finish anything.

Mr. Breaugh: That might not be a bad suggestion.

Mr. Chairman: Fine. Two weeks from today will be December 16.

ORGANIZATION

Mr. Chairman: Item 4--you have a budget before you. You will recall this was referred to the subcommittee, dealt with in the subcommittee, and it is back before you now. Mr. Breaugh moves this. If there are no questions or comments and if there is no opposition, we will go by consensus again and refer this to the Board of Internal Economy.

Mr. Breaugh: I think you do need a formal motion to go through the committee approving the budget.

Mr. Chairman: Mr. Breaugh moves that the budget be approved.

Motion agreed to.

Mr. Chairman: There is no item before you, but the clerk tells me the Speaker has indicated he is prepared to come before the committee with regard to the estimates which affect his office and to defend his estimates. We can schedule that for whenever we wish. Does the clerk have any particular idea how long this would take, based on past experiences?

Clerk of the Committee: The House has allotted five hours for consideration of the estimates. I do not think the committee in the past has used the total time. This year it is more than we have had in the past, but it is up to the committee to decide how much of that five hours it wishes to use.

Mr. Chairman: We do not have before us--or do we?--anything that has been sent around with regard to the individual items?

Clerk of the Committee: Each member should have received the estimates books.

Mr. Chairman: If not, I am sure you have additional copies to distribute to the members.

Mr. Polsinelli: Will we have time for the Speaker's estimates before Christmas?

Mr. Chairman: It may be something you will want to deal with in the next few weeks, or it may be something you want to leave until the new year, when the committee will probably be sitting three or four weeks or something of that nature in order to deal with items that come before it between the current session and the next one.

Mr. Polsinelli: I would recommend that the clerk of the committee schedule some time for the committee meetings in between this session and the next session to look at the estimates of the office of the Speaker.

Mr. Breaugh: If I may, I would suggest that we are going to have a full plate for the next few weeks, so I do not think the estimates have any urgency about them. We will get the conflict-of-interest bill. I am told it has just cleared the chamber and will be here, and you may anticipate that the Attorney General (Mr. Scott) will be anxious to have that matter dealt with.

If we can get through the reorganization and the other business that we have on our agenda in the next two or three weeks, we will do well.

Mr. Chairman: The consensus then is that we deal with this some time in the new year, and the clerk will schedule that some time. The Speaker will be coming before us in the near future and will be putting before the committee a proposal as to the items we will deal with at that time. The whips of the various caucuses and the House leaders will have to get together and decide how much time is allocated for each committee.

If there is no further business, I am going to ask the subcommittee to stay behind so we can decide when we are going to meet. We can meet right now or we can meet until six o'clock or for whatever length time you want to meet, or we can meet on another day, before next Wednesday.

The committee adjourned at 5:11 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

OFFICE OF THE ASSEMBLY

WEDNESDAY, DECEMBER 9, 1987



Mr. Breaugh: No, but he would be more than happy to come.

Mrs. Sullivan: I know he would be delighted.

Mr. Chairman: Next is item 7: "The agenda for each meeting of the Management Advisory Committee shall be made available in advance to each member of the subcommittee on agenda and procedure of the standing committee on the Legislative Assembly. Members of the Legislative Assembly shall be entitled to attend meetings of the Management Advisory Committee as observers. The minutes of each meeting of the Management Advisory Committee shall be provided to the subcommittee on agenda and procedure of the standing committee on the Legislative Assembly."

Mr. Breaugh: There is one small change that we might consider here. It is inconceivable to me that members of the assembly, who would be informed of the committee meeting and would have a right to attend, would have the right to attend only as observers. I do not think anybody is interested in doing this. If a member of the assembly has a problem and wants to appear before this committee to get it resolved, he is going to have a difficult time doing that if he is not allowed to speak. Could we just strike the words "as observers" and let the problem resolve itself? I do not suggest that it would be a big deal.

For example, I would not go to one of these meetings unless they were dealing with some problem that I had. I would want to voice my opinion and at least tell them what the problem is. My difficulty is resolved if we just strike the words "as observers" from that recommendation.

Mr. Chairman: Mrs. Sullivan, you had your hand up first. Was this on this point?

Mrs. Sullivan: I fundamentally disagree with this recommendation. The reason is that I really believe this Management Advisory Committee is in fact a management committee designed to carry out the ongoing operations. It is a working committee of staff. This is not a committee where members' recommendations, which ordinarily would come through this committee, the standing committee on the Legislative Assembly, to the board and therefore be carried out, would be put into the process. This is an inadequate recommendation because what it does is downplay the work of this committee, which has specific instructions under the standing orders, and the Board of Internal Economy has specific duties under the Legislative Assembly Act. This is an additional process requirement that, in fact, is cumbersome. It will really reflect badly over a period of time, and will ensure that this committee is not able to do its functional work.

Mr. Polsinelli: I think I agree with Barbara in this situation. What we want to do with this recommendation is take ourselves out of the supervisory role that this committee is really trying to establish for itself, to more of an administrative role. Perhaps the subcommittee that came up with this recommendation could explain that and see whether I am in error in my interpretation.

Mr. Breaugh: I think the difficulty here is that we have never attempted to set out who does what and so it is very unclear around here. For example, what does the Board of Internal Economy do? The end result has been, probably, a whole lot of things that it does not want to do and that are inappropriate for it to do. What does this committee have as its mandate? We have never really clarified that.

I see this, and the reason the recommendation is here, as essentially a staff committee. If a member had a problem with the installation of computers or with the budget in the constituency office or something like that, this is a vehicle whereby the individual member could go and make his or her problems known to the management committee that basically administers the budget or does things of that nature. It is an opportunity to work out a practical problem that you might have in the administration of your own office. It is not a problem that perhaps is applicable to all members. In that case, I would say it belongs here. If it is a budgetary matter, it belongs with the Board of Internal Economy.

I see this as being, basically and simply, a staff management decision-making process. Members of the assembly obviously are operators of certain offices in the assembly. If there is a problem in my office as an individual member, this would be the vehicle where I would make the first attempt to try to get it resolved. If it were a policy matter or a major budgetary matter, it is probably going to go to one of the other two decision-making bodies; but this is a way to resolve that problem. It is something we do not have now.

Mr. Polsinelli: Why could you not resolve it with the person who occupies the position of director of administration? If you have a particular problem with, say, the computers in your Queen's Park office or your constituency office, or what have you, would not the appropriate vehicle be to contact the person who is responsible for that certain administration to try to clear up the problem? If the problem were not cleared up, then I would suggest that, as an individual member, the appropriate vehicle to go to next would be a committee of members of the Legislature, which would probably be this committee here. You can send a note down saying you have got a problem: "This has not been resolved. Is the committee prepared to look at that particular issue that has not been resolved by a particular bureaucrat?"

I could see more problems from each individual member of the Legislature trying to bring his particular problem to this management committee, which is really there to administer the Office of the Assembly, than if he brought it to a committee such as ours. I think if I have a problem and an administrator or member of the assembly cannot clear it up, then I would come to this committee. It would be a problem that would be of general application or a specific problem that has not been resolved to my satisfaction.

I do not see my place as a member of this Legislature to attend a Management Advisory Committee meeting and say, "I have got this particular problem. You guys work it out," or "Let us work out a solution to this." That is not what I see my role as being.

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Mrs. Sullivan: I would like once to again respond to Mr. Breaugh's point relating to specific mandates of the board and of this committee. I think they are very clear. Under section 87 of the Legislative Assembly Act, there is a very clear outline of the powers and duties of the Board of Internal Economy, and under section 17 of the standing orders, there is specific direction and empowerment to this committee. It means that members should come to this committee, that recommendations go from this committee and the administrative direction is given from the Board of Internal Economy--go from here to the board--and that is where the policy direction is given to the administration.

It seems to me that what is there has been workable in the past and there is a rationale for it. Individual members who are providing individual direction to members of the staff, it seems to me, ultimately will create great problems. Within the standing orders and within the Legislative Assembly Act, I think we have enough power and enough duties to make the system work, using the existing rules.

If it does not work, then perhaps it is the fault as much of the members on this committee who are not soliciting the views and requirements of the members of the House as it is of the rules, which are very broad.

Mr. Breaugh: If I can just respond to it, that is not the way this place works at all. Since this committee was established, no member of the assembly has ever appeared at our door with a problem and said, "Here it should be resolved." When you come to think of it, it is not an appropriate forum for it. It is an appropriate forum to set in broad, general terms guidelines for members or services for members, but we do not need a full Hansard rolling, every word recorded and televised across Ontario, to deal with somebody's administrative problem.

The practical ramifications of this so far have been that northern members in my caucus sometimes have to do things that I do not have to do as a southern Ontario member. I do not have to stay overnight when I visit people in my riding; they do. They are perpetually going to the director of finance and explaining why their particular needs are not met by the current provisions of the Board of Internal Economy or any of the other standing orders or any of the other paraphernalia we have. That is a practical day-by-day problem that has to be resolved.

I believe this would be a useless process to try. It would be useful to put in place a mechanism like this, which basically would be a weekly staff meeting. There a member could appear and say: "I have this difficulty. It does not quite fit within the way the board thought of things. It does not quite seem like something that should apply to all members, but it is a problem that I have. Is there a way that we can resolve it which is fair?" I see this as a practical, working, decision-making, problem-solving place where a member could take some little difficulty that he or she had and get it resolved.

Mr. J. M. Johnson: I do not know why we are getting so excited about it. All it says is that members of this committee shall be entitled to attend meetings of the management advisory committee. We can delete "as observers." It does not really matter if the chairman of the management committee does not wish to call on the members. What happens then, Mr. Breaugh?

Mr. Breaugh: I do not have any problem with that. If a member had a problem with an office budget or a computer or an accommodation problem and took the time to visit this committee and explain the problem, I cannot imagine the clerk or the chairman of the committee saying: "You cannot talk. You cannot tell us what the problem is." If we delete the words "as observers" and try this process for a while, we might actually get something that solves some problems. That has been a long-standing difficulty here, that we cannot find the board that is responsible for resolving practical problems that we have in the administration of our offices.

Mr. J. M. Johnson: I was not quite through. I just wanted to say that the subcommittee agreed with this. We did not have any problem with it and I really do not see it as a problem here. We are imagining things that may happen. It really seems quite a reasonable solution.

Mr. Polsinelli: Mr. Breaugh, why would those not be the types of problems that would be of general application? If northern members have different requirements from southern members, why can we not make a rule that would accommodate the northern members? Why can those types of problems not be brought to this committee so that we can make a recommendation to the Board of Internal Economy?

Mr. Breaugh: To tell you the truth, I do not think it is appropriate that 11 members of the assembly sit around and make some august decision on whether or not somebody can stay overnight in Wawa.

Mr. Polsinelli: Neither do I. That is a problem--

Mr. Breaugh: I think that is a staff problem.

Mr. Polsinelli: No. That is a problem of general application. That type of item does not fall within either our constituency budget or our budget as members; so maybe it is an issue that this committee should look at and determine whether northern members should have a specific flexibility of either their global allowance or their constituency budget to apply towards overnight stays. That is a problem of general application. As a matter of fact, I see the appropriate forum for discussing that issue as being this committee. I do not see the appropriate forum for discussing that issue as being the Management Advisory Committee that takes direction from this committee and from the Board of Internal Economy. I do not think they should have the authority to make that type of decision.

Mr. Breaugh: They do.

Mr. Polsinelli: My personal opinion is that I do not think they should have that authority, and perhaps what we should do as a committee is put together a list of those types of problems, examine them as a committee, as members of the Legislature, and determine whether we should make a recommendation to the Board of Internal Economy to amend its rules for northern members.

Interjection: I disagree.

Mr. Breaugh: I do not feel that I am elected to be here to solve problems about whether somebody can stay in Wawa overnight. That is not why I am here.

Mr. Polsinelli: No, but part of this committee is to look at the services that are provided to members and part of our responsibility is to ensure that the services that are provided are adequate for their needs. If you are bringing to us a situation where the services are not adequate to meet the needs of northern members, then I think it is our responsibility, as members of this particular committee, to look at that problem.

Mr. Breaugh: I do not agree.

Mr. Chairman: Are there any other members who wish to address this particular problem? I know we can keep on going back and forth, but I think that is not going to be useful, unless there is something new.

Mr. Breaugh: To get us out of this, I would move that the words "as observers" be struck out.

Mr. Chairman: Okay, that amendment has been suggested to the original discussion.

Mr. Polsinelli: Is he moving also that the item be adopted?

Mr. Breagh: I will do it that way, if you want.

Mr. Chairman: Yes, that has been recommended by the committee.

All those in favour of the recommendation? Opposed?

The whole of item 7 goes.

Mr. Breagh: The whole of item 7 is out? You are proposing that members of the assembly would go before this committee?

Mr. Polsinelli: No, I am proposing that we do not accept this recommendation from the subcommittee.

Mr. Breagh: No game here guys. There is no sense having steering committees work this stuff out if you want to do this kind of stuff with it.

Mr. Chairman: The recommendation by Mr. Breagh was to strike out in item 7 "as observers." That was defeated by a vote of five to two, so "as observers" stays in.

The next question before the committee, then, is with regard to the total item 7 that is before us.

Mr. Breagh: Let me just say, before you take the vote, that if you are setting up a secret management committee that will meet without notice, that members of the assembly do not have any right to attend, this whole package is off the table. I have had enough of this. For the 12 years I have been here, no one knows how decisions are made around this place. Members do not have access to when meetings are taking place. They do not know what the agendas are. They have not been informed as to what their rights are, and if you are proposing that this will be done in private by staff people, it is no go for me on any part of this package.

Mr. Chairman: I think the members have to keep in mind that this is an advisory committee and that the final decisions remain with the Board of Internal Economy, which of course is open to the members. Members may wish to vote one way or the other; but keep in mind that this is an advisory committee.

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Mr. J. M. Johnson: I have to agree with Mike that since we have now . been allowed in as observers, anyone who does wish to attend is only there as an observer and will have no part in the meeting. Surely we do not want to conduct the business in secret, as Mike suggests. To be advised as to what is going on in the Legislature is only reasonable.

Mr. Polsinelli: I think we have to agree to disagree on this because while this is a management advisory committee, as the words imply, it is management. It is a staff committee. It is not a political committee, and I do not think we have any place on it.

Mr. Chairman: Any others? If not, we will have to deal with item 7 and the question is whether members of the Legislature may attend these meetings.

Mr. Breaugh: No, that is not the question. The question is the recommendation that is coming from the steering committee that is before you, which is far different from that.

Mr. Chairman: Item 7 says: "The agenda for each meeting of the management advisory committee shall be made available in advance to each member of the subcommittee on agenda--

Mr. Breaugh: Right. That is what we are voting on.

Mr. Chairman: --"and procedure of the standing committee on the Legislative Assembly. Members of the Legislative Assembly shall be entitled to attend meetings of the management advisory committee as observers. The minutes of each meeting of the management advisory committee shall be provided to the subcommittee on agenda and procedure of the standing committee on the Legislative Assembly."

Maybe we should take this in different parts, if you wish, but part of it is whether you can attend or not.

Mr. Breaugh: Yes, but I would suggest to you, sir, that the more important part is that it is not a secret meeting. There are minutes kept and agendas put out so that we know what is being done.

Mr. Chairman: There are different parts of it.

Mr. Breaugh: I cannot conceive of anybody objecting to this, but if you do, I tell you that the work of the steering committee is out the window. I am not in agreement with proceeding with any further part of this. I mean we are simply asking for a simple notice provision and that the agenda be made public. That is all.

Mr. J. M. Johnson: I wonder if we could call on some expert advice of the Clerk or the Speaker to tell us if there is any problem with the motion that is presented or item 7?

Mr. Chairman: Let us just keep that in abeyance.

Mr. Polsinelli: In terms of the agenda, I have no problems with that being released to members upon request. In terms of the minutes, I have no problems with that being released to members upon request. I would stay it stops there, but if you request the agenda from the management advisory committee, then you would get a copy of the agenda. If you request the minutes of the meetings, you would get copies of the minutes. I would think it stops there. I am fundamentally opposed to the principle that politicians--and we all are--should be allowed to attend and make contributions to staff meetings because effectively this is how I see this management advisory committee.

Mr. Cordiano: It is not a question of making your presence felt. I think it is more a matter of whether we want to be there. Quite frankly, I think if it is a staff meeting, then certainly they will make their recommendations known to the Board of Internal Economy at some point. They have the final say. They have the power vested in the Board of Internal Economy to decide those matters one way or the other and it is still in our hands.

Mr. Breaugh: Let me try this on for size.

Mr. Chairman: Just a moment, Mr. Breaugh. I think we are getting off on the wrong foot here. Mr. Faubert, did you have your hand up? I thought you did.

Mr. Faubert: Yes, I did.

Mr. Chairman: Mr. Faubert and then Mr. Breaugh.

Mr. Faubert: I do not want to get into an argument on this, but there is a basic principle here of who are the policymakers and who are the administrators. I am not sure of the principle we are arguing about. Is it the secrecy of an advisory committee? I have no problem that agendas are circulated and that minutes are also circulated, but I did have an objection to members of the committee being able to participate on that basis. If they can go as observers, that is fine. Within this paragraph, I have no objection overall, now that we have established whether they can go as participants or go as observers. I think that was established on the last vote.

When it comes to this whole paragraph, I am not privy to the past. I do not know whether, in the past, there has been some concern expressed by members individually or collectively about whether they have any input. I do not know what is going on and there are no minutes or agenda. But if it is a principle that agendas should be circulated and that minutes should be circulated, I will support that. I am quite prepared to support something on that basis. That is all that paragraph says to me. It does not say everyone is going to participate.

Mr. Breaugh: I am getting a little perturbed about the process we are going through here. There is no sense in striking a steering committee to work out arrangements that are satisfactory to all three parties and then abandoning ship when it comes back in. It is now to the point where we are simply asking that three people, one in each caucus, be notified of what is going on at this committee.

The option then would be, I suppose, to try to pick it up at the standing committee on the Legislative Assembly when it is discussed there, if it goes that far, or at the Board of Internal Economy. We would have to try to give our people on those committees some notice that an item went through the agenda of this advisory committee last week. You would then have a chance to discuss that at one of the other two committees. That is all that is being asked for in here, and I really cannot see any problem with it.

Mr. Morin: Nothing prevents us from adding on another phrase and saying, "Upon request, a member may participate and may bring a grievance before the committee." Would that be satisfactory?

Mr. Breaugh: I think that would solve any practical problem.

Mr. Morin: I am sure the committee would not refuse a member's appearance before the committee.

Mr. Polsinelli: I would be happy with that, but I want to make one comment about what Mr. Breaugh said. He said there is no use in establishing a subcommittee to make recommendations to this committee that are acceptable to all three parties and then coming here and having those items discussed. Do

you just want me to nod as to what the subcommittee does, or my representative on the subcommittee does? That is the way things may have been done in the past, but I see this committee as going far beyond that.

I see it as looking at the individual rights of each particular member. If this committee is to work effectively, then we all have to have our own voices on this and not necessarily just our parties' voices. When we are dealing with those items that affect the individual members and we all vote along party lines, then we are really defeating the purpose of having this committee. Let us just have the House leaders look at those issues.

Mr. Chairman: OK. I have no other people who wish to speak on this.

Mr. Cordiano: Are we voting on that? Are we taking a vote or do we have a consensus here?

Mr. Chairman: I want the exact words that we are adding on.

Mr. Morin: Perhaps Mike could phrase that easily, that a member, upon request, may appear before the committee for any grievance.

Mr. Chairman: Then you would have to deal again with "as observers."

Mr. Morin: No, leave "as observers" there and then just add on another sentence.

Mr. Chairman: At the end?

Mr. Morin: Right between "as observers"--put your sentence there--and "The minutes of each meeting of the management advisory committee."

Mr. Chairman: "This does not preclude a member from requesting--"

Mr. Morin: Or "Upon request, a member could appear before the committee in order to discuss matters related to his riding" or "related to personal matters" or whatever. That could be the sort of general line.

Mr. Breaugh: To tell you the truth, I think we would be better off to remain silent on the matter. I trust the good judgement of the Clerk, who would chair that committee, not to be too rude to members of the assembly who might appear.

Mr. Chairman: I am sure, knowing the Clerk and knowing at least some of the members--

Mr. Breaugh: I am reminding him that his position will be reviewed shortly.

Mr. Morin: Just add on the line. You are there as an observer, but upon request, you may appear.

Mr. Chairman: "Upon request, a member may appear before the committee."

Mrs. Sullivan: After the word "observers," insert "and upon request, a member may attend and appear before the committee."

Mr. Chairman: OK, I have that.

Mr. Breaugh: To show you what a nice guy I am, I agree with the wording change.

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Mr. Chairman: The second and third sentences would then read, "Members of the Legislative Assembly committee shall be entitled to attend meetings of the management advisory committee as observers. Upon request, a member may attend and appear before the committee."

All those in favour of that amendment? All those opposed? Carried.

All those in favour of item 7 as amended? Carried.

Mr. Chairman: Item 8 says: "The positions of Clerk of the Legislative Assembly, executive director of the Legislative Assembly library, executive director of assembly services, controller and Sergeant-at-Arms shall be filled according to the following procedures.

"1. The Speaker or the Board of Internal Economy shall establish the qualifications for the positions of Clerk of the Legislative Assembly, executive director of the Legislative Assembly library, executive director of Assembly services, controller and the Sergeant-at-Arms."

Mr. Polsinelli: Does the Speaker or the Board of Internal Economy mean that if the Speaker does not do it, the Board of Internal Economy does, or does it mean that if the Speaker does it, the Board of Internal Economy has no say in it? Can I get a clarification of that?

Mr. Breaugh: I think the problem is that if, for example, it was decided that there would be a substantive change in what any one of these people did, then the Speaker would probably want to seek some approvals from the Board of Internal Economy because, for example, there may be budgetary changes involved, there may be a salary change involved or there may be other responsibilities. I do not have any problem with the wording as it is.

I would say it falls this way: If it is to be the traditional job description with no big change in salary and responsibilities, the Speaker would probably feel very comfortable. We know what that position is. We know how much it pays, what the budget is, and he would just proceed. But if he was suggesting some alteration, he may want to seek the advice of the board. So one of those two ways would be how it would get done.

Mr. Polsinelli: I have no problem with the recommendation as it is worded. I just wanted clarification. It seems, however, that the wording does not reflect the explanation. If the committee is prepared to accept it as it is, I am prepared to support it, but the wording does not reflect what has been explained to me.

Mr. Cordiano: The effect you want to give it is the Speaker and/or the Board of Internal Economy. Is that what you are saying?

Mr. Polsinelli: I think I would have been more comfortable with something along the lines of "the Speaker, with the advice of the Board of Internal Economy," or something like that. We show where the responsibility lies. If the responsibility should lie exclusively with the Speaker, then let it lie exclusively with the Speaker. If it should lie with the Board of

Internal Economy, let it lie there. If you want a dual responsibility, both being equal, then that is what you have got right now. Or, either the Speaker or the Board of Internal Economy could establish the qualifications for those positions, and neither one would have a say as to what the other is doing. If they establish different qualifications, and I cannot imagine that ever happening, but if they do, then who decides? This phraseology that we have before us does not really specify.

I would like to see a clear delineation of responsibility, whether it be the Speaker or the Board of Internal Economy; but, as I said, if the committee is prepared to accept this wording irrespective of what it says or does not say, I am prepared to support it because it is not a big deal. I do not see any issue ever arising in the future where the Speaker cannot be in agreement with the Board of Internal Economy.

Mr. Morin: Why should the Board of Internal Economy be involved?

Mr. Polsinelli: It is a decision for the committee or the board itself to make at this point, I believe.

Mr. Breaugh: I think the attempt was to try to provide for both situations. I would read it quite simply that if the Speaker is intending to make no changes at all, but use the traditional position that is outlined here, he does not really need to go to the board. It is only on the occasion when he would be altering in some fashion the responsibility, the budget, or some other changes were being made that I think for practical purposes he does have to consult the board. The board strikes the budget.

Mr. Morin: Is not the Speaker, instead of the board, responsible for the hiring of the staff? The board holds the money, but the Speaker is responsible. So why should we include the board?

Mr. Polsinelli: Then this recommendation, if accepted, may change that responsibility. If that is the practice and that is where the responsibility lies at this point, then this recommendation may effectively change that, because it is also putting the responsibility on the board.

Mr. Breaugh: Do you want to try some wording on us?

Mr. Polsinelli: I would say "the Speaker, with the advice of the Board of Internal Economy."

Mr. Chairman: How about "the Board of Internal Economy, on the advice of the Speaker"?

Mr. Polsinelli: Or something like that. Quite frankly, I do not care which way it goes as long as it is clear which way it is going.

Mr. Chairman: The Speaker then initiates it and gives the advice to the Board of Internal Economy, which will approve or disapprove because of the money involved.

Mr. Breaugh: I see a little bit of a problem. I view it the other way around, frankly. If the Speaker is required to go to the board every time one of these positions has to be filled, that really--

Mr. Polsinelli: Then why do we not just strike out the Board of Internal Economy? "The Speaker shall establish the qualifications," etc. I think that makes it clear and it clearly puts the onus on the Speaker, as has been the established practice, I understand.

Mr. Breaugh: Not to speak harshly of any Speaker I have ever known, I am a little reluctant to clearly put that in the Speaker's bailiwick, where he could change the qualifications for these positions on his own initiative. For practical purposes, I do not think anybody would ever try that.

Mr. Polsinelli: Any Speaker who would want to be Speaker, yes.

Mr. Breaugh: I am open to wording changes.

Mrs. Sullivan: I understand the concept the committee has come forward with here, and I think the concept is one that the board has to look at seriously. That is the involvement of this committee in the selection of the top four administrative people in the Clerk's office.

I think what has happened here, though, is a bit of a jumble. I have been trying to find the section that gives the Speaker's responsibilities with regard to staff. I found section 91a, where "The Speaker may dismiss, suspend or reprimand for misconduct." Clearly, there is a role for the Speaker. There is somewhere else a role for the Board of Internal Economy, but I have not been able to find that one either.

This recommendation in fact eliminates participation of the Speaker or the Clerk, I think, or the members of the board in terms of making recommendations for the selection of personnel. Basically, this recommendation is saying that this committee shall be the hiring committee.

I am not sure whether that will wash in terms of what the act says and what the standing orders say. I do not know, but perhaps the Speaker might want to speak to that for a bit. I think the idea of a participation of this committee in the process is an important one, but I am not sure if this fits.

Mr. Breaugh: This is basically the process that was used to hire the new Clerk, so it is simply a reaffirmation of that process. I do not really see a problem with it. Claudio has kind of picked up on one where maybe you wanted to change the job description substantially.

In practical terms, it really is not a problem. When one thinks back in recent history of hirings and firings around here, people were smart enough to know that nobody could take that on their own, that that had to be done in consultation with representatives of all three caucuses and that where there were financial considerations the Board of Internal Economy had to be involved.

I cannot envisage any Speaker ever who would be so insensitive as to go around firing people or hiring people on his own initiative. I think one of the reasons he would be a Speaker is that he would know he would at least have to talk to some other people.

I do not see the practical problems that people are raising. I have no difficulty with some wording here which alters the process to make it clear that the Speaker requires the advice of the board or something like that, but it does seem to me that this wording will suffice.

Mr. Chairman: I have a suggestion here. Why do we not leave it, "The Speaker, after consulting with the Board of Internal Economy, shall establish the qualifications for the position involved"?

Mr. Breaugh: I have no problem with that.

Mrs. Sullivan: That is where I do have a problem. Qualifications are different from a job description. Mike mentioned the term "job description," but some of these positions are set out in the act and along with them goes almost a job description. The word "qualifications" means something very different than "job description." It might be niggling, but I do have problems with "on the advice of the Board of Internal Economy," or whatever. Qualifications are almost a requirement of the job.

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Mr. Chairman: Some of them are set out, as you say, in the act, so we do not want to run counter to what is already etched in stone.

Mr. Faubert: My only comment is that surely these are done or should be done long before you require the job. This seems to be a process in which once you establish who will do it and the procedure for doing it, all this will be done, so it is clearly understood. You do not just wait for a vacancy to occur before you write the job description, qualifications, salary, benefits and all the other things. That is surely some form of established process--or is it? I do not know. That is one of the things I am not aware of.

I do not see any problem with the process as it has gone through right here. How do we get the first one? You say it is the Speaker. The Speaker is primarily the minister in that role and he has that responsibility. He can have the advice of the Board of Internal Economy in establishing qualifications, job descriptions and whatever, but it is still strictly the Speaker. The insertion of the committee comes in items 4 and 5. So I do not understand what the argument is all about at this point.

Mr. J. M. Johnson: When we have gone through this process and we have actually agreed on all the proposals, what happens with our report then?

Mr. Chairman: As I understand it, it goes to the Board of Internal Economy.

Mr. J. M. Johnson: Are they obligated to accept our proposals as presented or may they make some slight adjustments?

Mr. Chairman: As I understand it, they are not obligated to accept the recommendations of this committee.

Mr. J. M. Johnson: Then why do we get so hung up with all the terminology? Let us do the best thing we can.

Mr. Breaugh: What I suggest is that we put it forward as is. If the board has problems with the wording when it deliberates on these recommendations, it can do it.

The problem of course--and Mr. Faubert put his finger on it--is that we have not done this before. On every occasion in the last little while--when, for example, we hired a new Clerk of the House--the Speaker and all the

members seized upon the situation to try to sort out some very old, outstanding problems around qualifications, salary levels, responsibilities and things of that nature. In part, we are still doing that today.

It seems to me that we could leave it as is and send the recommendations to the board. If they have some august deliberations around the matter, let them get august on it.

Mr. Chairman: The only concern I have is that it looks as if we cannot make up our minds on it. We are saying the Speaker or the Board of Internal Economy. I would much rather see that we insert something such as, "the Speaker, after consulting with the Board of Internal Economy," does something or "the board, after consulting with the Speaker." But we should make up our minds one way or the other. I would prefer the former, which I recommended earlier, but I think we should have a clear recommendation to the board.

Mr. Breaugh: I have no problem with that.

Mr. Polsinelli: Mrs. Sullivan just brought something to my attention and I think we should bring it to this committee's attention. The Legislative Assembly Act, section 74, indicates, first, that the Clerk of the assembly--

Mr. J. M. Johnson: We are changing that next.

Mr. Polsinelli: I will read it verbatim. Subsection 74(1): "The Lieutenant Governor in Council shall appoint the Clerk of the Legislative Assembly," which means it is an order-in-council appointment.

Mr. Breaugh: How you get it to that point is what we are discussing.

Mr. Polsinelli: Subsection 74(3) indicates, "The first clerk assistant, the Sergeant at Arms and the director of administration shall be appointed by the Lieutenant Governor in Council"--also order-in-council appointments--"upon such terms and conditions as the Speaker may recommend and the other employees of the Office of the Assembly shall be appointed by the Speaker."

Mr. Breaugh: What we are doing is cleaning up the process prior to that order in council.

Mr. Polsinelli: What this essentially says is that the office of the Clerk of the Assembly and the office of these other positions we are talking about are order-in-council appointments and the other staff is basically appointed by the Speaker. In my reading of this act and in my reading of the recommendation, the more appropriate wording would be what was suggested earlier, "The Speaker, upon the advice or upon consultation with the Board of Internal Economy, shall set the qualifications."

Mr. Breaugh: I have no problem with that.

Mr. Polsinelli: It is the Speaker's responsibility to do it, I would take it, so he would seek advice from the board and then follow the rest of the procedures as outlined in this recommendations.

Mr. Chairman: Okay. "The Speaker, after consulting with the Board of Internal Economy" or "consulting with or after consultation with the Board of Internal Economy."

Mr. Polsinelli: All it does is say quite clearly from this committee that the responsibility should like with the Speaker, but that the Speaker should consult with the Board of Internal Economy prior to making a determination.

Mr. Chairman: Okay. The suggestion is then, "The Speaker, after consulting with the Board of Internal Economy, shall establish the qualifications for the position of the clerk, etc."

Agreed to.

Mr. Chairman: Next, "The director of human resources shall advertise for applicants for the positions and shall receive all applications."

Agreed to.

Mr. Chairman: "The Speaker shall submit to the standing committee on the Legislative Assembly, or a subcommittee thereof, a short list of candidates qualified for the position."

It was generally felt by the subcommittee that the committee could decide at that time whether it wished to do it as a committee or have the subcommittee do it.

Agreed to.

Mr. Chairman: Next, "The standing committee on the Legislative Assembly, or a subcommittee appointed by it, shall interview the candidates on the short list. In the case of a subcommittee appointed for this purpose, the subcommittee shall recommend to the committee the name of the candidate it feels is best qualified for the position."

Mr. Polsinelli: That does not jibe with the recommendations that I have before me from the subcommittee. Has that been changed or am I reading in the wrong place?

Mr. Breaugh: I think you are reading in the wrong place.

Mr. Polsinelli: Where are you reading from?

Mr. Breaugh: Item 8, number 4.

Mr. Chairman: What you have there did not jibe with what I read?

Mr. Polsinelli: Item 8, subsection 4, yes. Oh, yes, I am sorry. I was reading one further ahead. Could I just make a comment on that?

Mr. Chairman: On 4?

Mr. Polsinelli: Yes, on 4. I would suggest that if a subcommittee of this committee would interview the applicants, then the subcommittee report should go directly to the Board of Internal Economy, rather than its coming back to this committee. If we, as members of the committee, decide that a subcommittee should be struck to interview the applicants, I think it would be unfair for that subcommittee to report to this committee and then have the balance of the members of this committee looking at the recommendations of this subcommittee without having had the benefit of interviewing the applicants.

I think if we take the step of establishing a subcommittee and putting a certain faith and confidence in them in choosing the appropriate member, that subcommittee report should stand and go directly to the Board of Internal Economy.

Mr. Breaugh: The problem is that, procedurally, it has to come back through the committee. I think you are basically making the decision do you want to do this hiring process using 11 people or four people. For example, when we did the clerks process, it looked as if it would be a monumental task at sorting out applications. It turned out it was not that bad at all, and we got it down to a short list of five or six people, and the whole committee sat and did it and it was not that difficult to make our choices. It was not that difficult to get agreement either. I think you are basically acknowledging that sometimes you may want to do that by means of four people. Other times you may want to use the full committee to do it, and the option is always there for the committee to exercise it. Technically, it has to come back and forth and in and out of here by means of a motion at committee.

Mr. Chairman: Maybe I can help. In the standing orders of the Legislative Assembly, standing order 105a: "Unless otherwise ordered, standing or select committees shall have the power to appoint subcommittees, which shall have power to report from time to time to the committee."

Mr. Polsinelli: There is no question about that, all I am concerned about is basically another---.

Mr. Breaugh: I hear you.

Mr. Polsinelli: Then why do we not make it come back to the committee and also the Board of Internal Economy? I would not see myself, for example, as not having participated in the subcommittee to determine effectively whether or not one of the candidates was qualified or not, but I can envision, at some point in the future, one of the members of the subcommittee, not having his preferred applicant being recommended by the subcommittee, trying to reopen the issue or open the issue at the full committee level. I would not see that type of process as being appropriate. That is my concern.

I do not want to see a three-member subcommittee struck. If one of the three is unhappy with a decision that is made by the subcommittee, it comes back to the full committee. Then 11 of us are debating whether or not this individual who has been recommended by two of the three members is the appropriate one. That is my concern.

1630

Mrs. Sullivan: I would just like to ask a question, going back to the process. It relates to where the Speaker and members of the board fit into that process. I am not quite certain where they were. Did the Speaker participate also in the interviews? We have left that out of this recommendation.

Mr. Breaugh: Essentially, we used the device of inviting the Speaker to sit with the committee. That is all.

Mr. Chairman: So are we agreed on number four?

Agreed to.

Mr. Chairman: Number 5: "The standing committee on the Legislative Assembly shall make a report to the Board of Internal Economy recommending the name of the candidate for appointment to the position."

Mr. Polsinelli: Why can we not satisfy my concerns with number 5? Where in number 4 the subcommittee has to make a report to the full committee, why can number 5 not be a direction to this committee just to basically redirect the report of the subcommittee directly to the board?

Mr. Chairman: I think there may be some members who do not mind the subcommittee doing the work provided they have a kind of kick at the cat some time in the future, because it has to come back to the committee. If you just allow the subcommittee to make the decision and go directly to the board, there may be problems with membership on the subcommittee where people say, "I want to be there too."

Mr. Polsinelli: That is where the committee can decide to have a subcommittee of five or six or seven.

Mr. J. M. Johnson: Having been around here 12 years, I know it is far better to share the blame 11 ways instead of four.

Mr. Chairman: Well said.

Mr. Faubert: First of all, I can appreciate Claudio's concern, but the whole concept of a subcommittee is that it reports back. It is a process thing and it has to come back to the committee that appointed it. That committee then makes the decision. I know of no process, no standing order or anything that would allow a subcommittee to make a report on its own or bypass the committee that appointed it.

Mr. Cordiano: You could make the point that no one really wants to rubber-stamp anything here or delegate the authority that you have on the committee, as a member of the committee, to a subcommittee without having the opportunity to review what the subcommittee has done. I have never done that on any committee in the short time that I have lived here.

Mr. Polsinelli: I think this is a little bit different, in the sense that we are not making a decision but rather a recommendation to someone else who is going to be doing the hiring. The reason that it comes through this committee is that you could have essentially all-party input, because these individuals will be dealing with our rights as members.

Let me take a crass example. In our situation here, we have a Liberal majority government. Quite frankly, the Liberal members of this committee could overturn any report that came from a subcommittee and change it at their whim. Yet the subcommittee is composed of one member from each of the parties, even though their representation in the House is not proportionate. So the report coming back from a subcommittee is perhaps a balanced view of the three parties, if not a balanced view of the members.

At some future point, you may not have that fortuitous situation of having 95 Liberal members. You may have 95 members of another party, 40 or 50 years down the line. At that point, would they be as generous in looking at these issues as fairly and philosophically as we do?

That being said, do we want these individuals whom we are going to recommend for hiring at some point in the future to really have the blessing of representatives of the three parties or do we want them to have the blessing of the majority of this committee? I do not know. I would think we are all honourable members and would deal with these issues in an honourable way, but that may not always happen.

Mr. Breaugh: I think we are saying, though, in all of these recommendations that people in this kind of position have to be totally acceptable to all three parties and all members.

This is not one of those things where you can afford to let yourself get caught in a voting situation. For example, if the steering committee made a recommendation that was two in favour and one against, that steering committee would be well advised to think it through until it finds somebody who is acceptable to everyone.

If we are doing anything here, we are saying that has to be the practice. People in these positions have to be acceptable to virtually all members. I think that is a wise thing to do. I would hate to be the person who stepped into one these positions where somebody had decided I was not well qualified and I could not do the job and I should not get it. There is a person who would have a very short career here. A government of 95 members might succeed in getting that person put in the position, but it would be like an invitation to a crucifixion, and not a very pleasant event.

Mr. Chairman: Is there general consensus that we adopt what we have?

Agreed to

It is also recommended "that the organization chart be amended to show the advisory relationship between the Clerk of the Legislative Assembly, the Sergeant at Arms and the standing committee on the Legislative Assembly." If you look at the attached you will notice the changes that have been included in the recommended chart, the broken line and so forth.

"The committee concurs with the proposal to appoint the person identified by a selection committee, comprised of the Speaker, the Clerk, the executive director of the legislative library and the director of human resources as most suitable for the position of controller and recommends to the Board of Internal Economy that such person be appointed to the position of controller."

Agreed to

The board will have this report, Mrs. Sullivan, before it on Monday, as I understand it?

Mrs. Sullivan: That is right.

Mr. Chairman: And you will deal post haste with the recommendations? Thank you very much for that.

Item 2 on the agenda is a discussion with respect to the dates for public hearings and clause-by-clause consideration of Bill 1, An Act to Provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office, otherwise known as the Members' Conflict of Interest Act.

All of you know that this item has been placed before the committee for discussion. I understand we should deal with it in January. In all likelihood, the select committee on constitutional reform will be sitting in February and the recommendation is that we deal with this in January with regard to the conflict-of-interest legislation.

Mr. Eves: My only comment, Mr. Chairman, and I am sure that Mike and government members on the committee will have some comment, is that several of us happen to be in the position where we are dealing with this matter as well as the select committee on constitutional reform. Yesterday, at an organizational meeting, the constitution committee agreed that we would commence public hearings the week of February 1.

Mr. Chairman: We have to do some advertising for this. I would recommend that we start early in January and deal with it in the first week and, if necessary, the second week to get the matter dealt with.

Mr. Breaugh: I suggest that we try for setting aside the first two weeks in January to deal with the conflict-of-interest bill. I am thinking that we need to do some kind of public hearing in the process, probably no more than two or three days. Then we will need another two or three days at least to deal with it clause-by-clause.

If we set aside the first two weeks and we sat on a Tuesday, Wednesday and Thursday rotation, it seems to me we could probably deal with that bill in that time frame.

Mr. J. M. Johnson: Is that January 4 to 11?

Mr. Chairman: January 5, 6 and 7.

I would also suggest that if we think we need a little more time in order to finish it the second week, we could always maybe sit an extra day the second week, if necessary.

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Mr. Breaugh: I am going to suggest to you that this may be the type of bill where you will need two or three days of public hearings.

Mr. Chairman: Yes.

Mr. Breaugh: Then I think you are going to need two or three days of clause-by-clause debate to process the bill so I would caution you to set out the first two weeks.

Mr. Chairman: Yes, I agree.

Mr. Breaugh: Is it enough notice to say that the public hearings start January 5? I would think that most people who would want to appear before the committee have probably been aware of the bill for some time, since June, and would have thought through whatever it is they want to say.

Mr. Chairman: I am sure the committee will choose to advertise. The question is to what extent we advertise. I am advised by the clerk that if we were to advertise in all dailies, then the price of that advertising would be somewhere in the neighbourhood of \$13,000 to advertise for this bill. Would that be three times in each of the dailies?

Clerk of the Committee: Once.

Mr. Chairman: Just once. Once in each of the dailies in Ontario would cost us \$13,000.

Mr. Cordiano: What have we done in the past?

Mr. Chairman: The alternative is to contact the office of the Attorney General to find out which groups have sent in letters and so forth and contact individuals or groups and to notify them that hearings are taking place and contact all members of the caucus and so forth that may have groups. We would notify these people by letter. This might be the alternative.

As you know, this is not a bill that necessarily, like a lot of other bills, has the interest of the public very much involved.

Mr. Faubert: Are there statutory requirements for advertising?

Mr. Chairman: No. The committee can choose.

Mr. Breaugh: But I do not think it would be a sensible move to have private public hearings and I regret having to spend the money, but I do think you have to provide notice and the traditional way is through the dailies. I would suggest that has to be done.

Mr. Chairman: What you are suggesting then, Mr. Breaugh, is that we advertise in all the dailies across the province.

Mr. Breaugh: Yes, once.

Mr. Eves: I like this clerk better than the clerk we have at the constitution committee. This one says it is only going to cost \$13,000. Yesterday, we were told it is going to cost \$18,000.

Mr. Breaugh: It is a bigger ad.

Mr. Chairman: Maybe the other clerk was personally going to deliver each--

Mr. Eves: Serious comment--

Do you think that provides enough notice, starting on January 5?

Clerk of the Committee: It takes at least 10 days once a decision is made on the wording of the ad to get it into a newspaper. I guess your major consideration would have to be that timing factor and whether people are going to read it.

Mr. Eves: Are people really going to pay attention to an advertisement that is going to appear in the newspaper around Christmas about conflict-of-interest hearings? This is my question.

Mr. Breaugh: I would say yes because in this particular instance, this is going to be very much interest groups, and those who have already thought about it. They have been kind of on notice since June that the bill is

coming forward. I do not have the normal hesitations that I would have about being a little short on the notice provisions.

Mr. Chairman: I do not know about other members of the committee, but I have not had a single telephone call, a single letter, a single person stop me on the street or any place to say, "Well look, you should deal with conflict of interest now or there," or "You should change it here or you should change it there." I would venture to say that probably applies to 90 per cent of the members here.

Mr. J. M. Johnson: I am going to suggest something that might be earth-shattering. A few weeks ago, we made a decision about using this TV Legislature for other purposes. Why in the world would we not use it to advertise committee hearings to the public?

Clerk of the Committee: We have in the past, either on a crawl before the meeting of the House or after the meeting of the House--

Mr. J. M. Johnson: I am thinking to advertise ahead of time saying that on January 5, 6 and 7 there will be public hearings for this particular bill.

Clerk of the Committee: That is what I meant, that each day, in some cases, we have put on--

Mr. J. M. Johnson: But not those particular days. I am talking about a few weeks in advance.

Mr. Breaugh: We discussed that yesterday in the constitutional committee. I think it is a good idea that we use the television facilities that we have to give notice to people that there will be public hearings in January. Once that schedule is set down, it would be a very simple matter to devise the crawls or put together the notices that would simply allow people to tune in, maybe to watch part of a question period or something, and get a television notice that there will be public hearings on these bills.

Mr. J. M. Johnson: Many of the people interested in this legislation will be the ones who do watch this channel.

Mr. Breaugh: It would be like the TV Guide promos and stuff like that.

Mrs. Sullivan: I just want to say that I have certainly had a lot of discussion with people who have come to talk to me about this conflict-of-interest bill. I think it largely relates to the case before the federal House. I think that is why there is interest in it. I think there is a sense that our bill is already through. Certainly, it is something that people have opinions about.

I would like to see a broader advertisement of the hearings, whether through advertisements in addition to the television, which I think is a useful idea, the Ontario Gazette, which I think could be used for this--can it?

Clerk of the Committee: It can, but it is sometimes a problem of the time factor. But we can put a notice in the Gazette.

Mrs. Sullivan: I think that might be another useful area. Plus, I do not see any reason why we cannot use press releases as well.

Mr. Chairman: So what you are suggesting is the Ontario Gazette, TVOntario--

Mrs. Sullivan: No, the legislative channel.

Mr. Chairman: What about TVOntario? No?

Mr. Breaugh: We should also put on our agenda, as a committee, that there really ought to be a better way to do this than the kind of ad hockery that each of our committees is now going through. There ought to be an accepted practice, and there kind-of sort-of is, but there kind-of sort-of is not. There should be a clear requirement on what the notification provisions are. Committees really should not be sitting around, some saying, "We will put it in all the dailies," some saying, "We will not." If we are going to have public notice, we have to kind of define what public notice is. I think we have heard several suggestions and ways to go about that, but we have never gotten around to kind of nailing that down, and it should be much tighter than it is.

Mr. J. M. Johnson: On that point, I would like to go on the record as saying that we should be giving consideration to weekly papers if we are talking about covering the province. I have about a dozen weeklies. Certain types of legislation pertain more to rural Ontario, so I think we have to be extremely careful if we set guidelines down.

Mr. Chairman: Are you recommending that for this? No, you are not. You are just considering it for the future?

Mr. J. M. Johnson: If we go into the discussion.

Mr. Chairman: OK, fair enough.

Mr. Eves: Is there a steering committee of this committee?

Mr. Chairman: There is. You had a report from the steering committee just a while ago.

Mr. Eves: I would just suggest that committee, in consultation with the clerk, after they get some idea or some sense of how many groups want to appear--would not necessarily lock us into that two-week period until we know how many groups we have and whether we have enough time to accommodate them in three days or two days of public hearings.

Mr. Breaugh: I accept that and my judgement call is that we are probably going to need at least three days of public hearings. I know we are going to have a little problem as we go through this clause by clause. This is not a simple bill, so it is going to take at least three legislative days to process it and we may not get through it in that time. I think I would set out saying three days for public hearings and three days to process the bill, but I would accept the notice that we may get more groups than we want, in which case you cannot begin to process the bill until you finish your public hearings. So it may not be possible to do that.

Mr. Polsinelli: One other item is how we would handle out-of-town requests, if there are any requests from out of town to make submissions.

Mr. Breaugh: If I could, Mr. Chairman, one of the things I suggested in the other committee--and I am going to suggest again here--is that we at

least explore the possibility of using the satellite system that we have. We can sit in this room and have two-way communication by television. We have already paid for the satellite time now. We may well be able to arrange hookups in most major centres in Ontario at no cost or minimal cost. So we have a little bit of experience at that.

I would suggest that rather than having--as we very often do at these things--delegations fly in from Thunder Bay to appear for 20 minutes at great cost to them, the obligation on providing the access is ours, and if we can, we explore the possibility of having those people visit a local cable outlet where they could do the broadcast and do the hookup, and that we explore that possibility of using the existing ONTParl channel to assist us in public hearings.

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Mr. Chairman: Yes. It may be more feasible in some instances to do that as opposed to having the person come down and appear before the committee here.

Mr. Breaugh: Yes.

Mr. Chairman: I have served on committees, as some of you have, where there have been just hundreds of delegations. I served on Bill 30 where we had 889 different submissions and I have served on others where there were one or two. I would think that this one will probably fall somewhere in between and on the lower end of the scale.

Anyway, the recommendation, as I understand it then, is that we advertise in the dailies; that we advertise in the Gazette, if possible; that we send letters to interested groups, those that have already expressed an interest in it; that we advertise on the legislative TV network and that we issue press releases.

Mr. Faubert: Obtain publicity from that with regard to--

Mr. Chairman: Okay.

Mr. Breaugh: One other little point. I think it is a good practice now, when we place our newspapers ads, to place them in both official languages.

Mr. Chairman: Does that double the cost?

Mr. Breaugh: No.

Mr. Chairman: Is it two columns?

Mr. Breaugh: Two columns.

Mr. Chairman: Just the print is smaller? Okay.

Mr. Morin: No, two columns.

Mr. Chairman: It may increase in cost, but we will just have to bear that. Obviously this will have to be a separate submission to the Board of Internal Economy. The other thing is we should include in that expenditure the possible expenditure for witnesses' travel.

Mr. Polsinelli: If we get several from one particular area of the province, it may be more advisable for us to go there.

Mr. Breaugh: I suggest we should be mindful of what Mr. Eves had to say. I am anticipating that most of the groups that have already contacted me one way or another through the bill will want to appear. That is not a large number of people, but there may well be others who want to make a presentation. I have suggested that we try to do the satellite hookup where that is possible. We can explore that, but it may well be that we get enough requests from Ottawa in particular as the place where this is being discussed, that we might set up one day's hearing there. I think for now I would be content to do the advertising and attempt to do it from here.

Mr. Chairman: If necessary, we may have to do a supplementary budget, but maybe the clerk can develop a budget for the committee. We can submit that to the--

Mr. Breaugh: You have not had your first budget approved yet, have you?

Mr. Chairman: No, that is going to the board on Monday, as I understand it.

Mr. Breaugh: I have no problem with the chairman taking a supplementary budget to the board on Monday that would include provision for two weeks of hearings, advertising and any other related costs, that be added to the existing proposal.

Mr. Chairman: Okay.

Mr. Eves: I was going to just comment further to my earlier remarks that I would like to see that any advertisement that is placed in the paper does not say that the hearings are only going to be held for three days, but that they are going to commence January 5, 1988. The number of groups you get will determine on how many days of hearings and how many weeks you are going to have.

Mr. Breaugh: I think perhaps we can expedite the matter by having the steering committee approve the wording. I do not think we have to wait to bring it back.

Mr. Chairman: I would hope so.

Mr. Breaugh: --future hearing notices should be a matter discussed here?

Mr. Chairman: Any other suggestions? If not, if there is agreement on that, the clerk will proceed with the advertising.

There is one other item we should discuss at this time. You have before you a letter, which was received from Richard Johnston with regard to his appearance before the committee next week. You will recall that this committee agreed last week that it be an in-camera meeting. I felt it only fair that you should be advised of his request and the committee has agreed to have it in camera. If anyone wishes to change it at this point, there is the opportunity. If not, it will remain in camera.

Mr. Breaugh: In general terms, I do not have a great deal of difficulty with having a private discussion, but I do think it is bad practice for us to be moving in camera without reason. Normally, meetings of the assembly are held in public. Unless there is an overriding concern, I would think that I would ask that a motion be put to hold it in camera, let me put it that way. I appreciate that there is some sensitivity here and that people may wish to discuss it, but I think when the matter is formally dealt with, it ought to be dealt with at a full public meeting. It was handled previously in that fashion. To have a committee of the assembly go in camera is unusual. I think somebody has to make the argument.

Mr. Cordiano: I know we discussed this last week, but I almost agree with what Mr. Breaugh is saying. I do not see any difficulty with having this not in camera. Whatever goes on the record is fine by me. It is not something that I am squeamish about discussing in any way, shape or form. I think there are some very interesting issues at hand here that we have to discuss and, quite frankly, I am prepared to do it on the record.

Mr. J. M. Johnson: There is no reason we have to go into camera. I do not know why we have to even debate it.

Mr. Chairman: The decision was made last week and I just raise it because--

Mr. J. M. Johnson: We are open for change.

Mr. Chairman: --the letter is before us. Unless there is a motion, we will agree that it is in camera.

Mr. Breaugh: I would prefer that you put it the other way around. The normal process would be that a committee can go in camera by means of a motion being put and people have to kind of put on the public record their justification for holding the meeting in camera. I think I do not want to stray from that tradition unless someone has a good reason. It seems to me that is this case, although last week we did kind of by consensus agree that there is no great difficulty either way. If someone wants it in camera, simply put a motion and we will see whether the motion carries, otherwise the committee will be in public as it usually is.

Mr. Chairman: Mr. Breaugh, ordinarily I would agree with you, except that the committee agreed last week to have it in camera. If the committee wants to change its mind on it, I feel there should be a motion not to have it in camera.

Mr. Breaugh: Okay. I move that Mr. Johnston's request be dealt with in public.

Mr. Cordiano: I mean do we necessarily have to have a motion? I think--

Mr. Breaugh: I do not think so.

Mr. Cordiano: --it is not necessary, Mr. Chairman, because quite frankly last week--I would say, upon reflection, I have changed my mind. I never thought about last week in that context. Quite frankly, I just thought, if you want to have it in camera because someone is particularly concerned about some aspect of this, then that is fine, but I do not see any really good reason to go in camera. Therefore, it should be normal practice and normal

practice or the usual practice is that we have open, public hearings of this committee.

Mr. Breaugh: I would share the sentiment. Just to explain myself, and I probably should, last week a member, whose opinion I respect a great deal, made a request. It seems to me that the rest of the committee in the spirit of consensus agreed to that. On reflection, there are some ramifications for this about the decision-making process and what goes on the record and what does not. On balance, we have now had the request from both sides. A member of this committee said, "I would prefer to deal with this in camera." We acceded to that last week. The member in question who was appearing says, "On balance, I would rather have this on the record." We have conflicting opinions here. The way to resolve that is to put a motion. If you want a motion that we hold the meeting on the record, I would be prepared to do that. I really think that the shoe should be on the other foot, but it does not matter to me.

Mr. Cordiano: Is there any particular reason why we should move in camera that we are not sensitive to or that I am not being sensitive to?

Mr. Chairman: I am the servant of the committee. If you want to have it in camera, I have no strong feelings about it. If you want to have it public, that is fine too. It does not matter to me. You people do the voting. I just pound the gavel. You can have it whichever way you want. I was just reiterating what the committee had decided last week.

I remember what John Diefenbaker said on a very controversial issue. He said: "Fifty per cent of my friends are on one side and 50 per cent of my friends are on the other side. You ask me who I am with? I am with my friends." So there you go.

So I am with all of you. You can decide whichever way you want to go. The only reason I was asking for a motion was that you had made a decision one way. That was the consensus.

Mr. Cordiano: I do not think we voted on it last week, did we?

1700

Mr. Chairman: There was a consensus last week. So if the consensus this week is to have it public, that is fine.

Mr. Cordiano: It is the prerogative of the committee to have a different consensus.

Mr. Chairman: Are you generally in favour of having a public, open, televised meeting next week?

Mrs. Sullivan: One thing I assume is the practice here is that on personnel matters, one goes in camera, and on other things one is ordinarily on the record. I think the issue put forth last week regarding this situation was that there may be questions larger than the specific request we are dealing with here. They may come back to personal views about the morality of certain situations in other jurisdictions. That was why I think the request was made.

In the long run, I would rather continue the tradition that in camera is used on as relatively few occasions as possible and related to personnel matters.

Mr. Faubert: Just on principle, I would rather it not be in camera. The member moved that it be in camera at the time, but I am just wondering whether there were any overriding reasons or statements.

Second, on a matter of procedure, do you ever have a point at which you go in camera to allow certain testimony to be given and then come back out? I understand the basic principle we are talking about here is that no real debate or decisions are made in camera. I think that is one we should really adhere to. But to allow certain evidence, is there not some provision in your standing orders or your rules of procedure to allow you to go into camera?

Mr. Chairman: I am not aware of any decisions that have ever been made in camera. If recommendations have been made in camera, then they come to the open meeting, at which time a decision is publicly arrived at.

Mr. Faubert: Yes, we used to do that in the city too, but you make your decision and then you come out and say yes.

I am talking about the debate. Is there not a provision? Have they never done it that way if some witness wants to give certain evidence in camera, especially if it is legal?

Mr. Breaugh: To be clear about it, around here the practice has been--not that much of the business we ever transacted is worthy of being done in secret--that when a committee wants to discuss something freely and openly without really doing anything, like drafting a report, it is generally considered that you do not need a full Hansard copy of everything that is said because people are trying to sort out their positions and come to some agreement about how a committee report will be worded and things of that nature.

By and large, that has been the reason why most of what we have to do is on the record. The only occasion when we do not have the Hansard services going is when a committee is not prepared to make decisions and is searching how to put together the words that will accurately reflect the committee's position on a given matter.

In practical terms, we do not really deal with personnel and property matters that normally ought to be done in private. So we do not have much of a tradition to lean on here.

I just think in retrospect, if a member has been invited to appear before the committee and he has expressed his reluctance to do so in camera, he will come and do it if that is the way to do it. We have two points of view here. I think in the long run we are better served if we keep this on the record. If someone wants to have a discussion about the world and how it functions, we can certainly do that elsewhere.

Mr. Chairman: I gather the consensus is to have an open meeting next week? OK.

Mr. J. M. Johnson: We have a request from Richard Johnston, the other Johnston, for some specifics relating to a matter that I am not that knowledgeable about. I did speak to the Minister of Government Services (Mr. Patten) at noon today, and he said that he had received a request from Mr. Johnston about some of these matters. I also understand that Larry Waters has dealt with it through the Legislative Assembly. I suggest that these people or someone who has worked on this in the past be in attendance as well to help guide us in making a decision next week.

Mr. Chairman: Is it the intention of the committee to deal with this more completely next week after Mr. Johnston makes his presentation? Correct me if I am wrong, but I thought that next week we would listen to Mr. Johnston and then the committee would make some determination as to where it wanted to go from there.

As you know, the Board of Internal Economy has charged us with making a recommendation on this matter and possibly setting some kind of precedent for the future. I did not know exactly what you wanted to do about that.

If you want to hear others, I am not opposed to it. I was not anticipating it, but the committee may do what it wishes.

Mr. Cordiano: What has the Board of Internal Economy asked us to do by what date? Is there a date?

Mr. Chairman: There is no date, if I remember correctly.

Mr. Cordiano: Looking at this will require a little further thinking. Since we are going to be dealing with the conflict-of-interest bill in the new year and a number of other items, I would like to have a little bit of time to reflect on this. I am not prepared to come back next week and vote on this, one way or the other.

Mr. Chairman: There is some background information that you have already received.

Mr. Cordiano: I do have it. It is in my possession. It is just that I would like an additional period of time to reflect on this and then come back and deal with it as a full committee hearing at some later date.

Mr. J. M. Johnson: Would you not feel, Mr. Chairman, that at the same time we are hearing the presentation, we should also hear from the Board of Internal Economy and the Ministry of Government Services? Is too much information dangerous?

Mrs. Sullivan: Just speaking to this point, one of the things I would like to see in relation to this request from Mr. Johnston is a report from staff. I do not know whether the thing to do is to ask for that in advance of his presentation, simultaneously, or whatever.

I think I said last week that I felt a request of this kind was unique and original. I would like to see it placed into a policy context, relating particularly to twinning arrangements, legislative assembly to legislative assembly, with other jurisdictions.

On a personal basis, before I am ready to say yea or nay to Mr. Johnston's request, I would like to see that sort of staff report. I do not know if that request should come now or later on, but I think it is worth while at least to have that idea put on the table.

Mr. Chairman: Can I recommend that everybody read the material again with regard to Nicaragua and that we listen to Mr. Johnston next week. Upon listening to him, we can then determine which other people we want to hear and at which time we want to deal with the matter more fully.

I did not anticipate that a decision would be arrived at next week, immediately after we hear from Mr. Johnston. This is a very important matter. It has wide-ranging ramifications as far as the expenditure of funds is concerned. The Board of Internal Economy has asked us to advise them on it. I do not expect we will deal with this before Christmas, and we may want to have some other hearings and bring in the minister or other members of the Ministry of Government Services and anyone else.

If you are in agreement with that, then can we decide on an agenda for that meeting.

1710

Mr. Cordiano: I think Mrs. Sullivan makes a very good point that we should deal with it in a policy context and try to establish a policy. I think that we are essentially trying to decide on the new policy for this Legislative Assembly. I think we are going into waters that have not been charted before and certainly we have to proceed on a step-by-step basis, but with a view to establishing a policy as to how we are going to act with regard to other countries around the world. That is essentially what we are dealing with here and there are a number of policy implications. I think we certainly have to spend a fair bit of time on this. I do not think it is something we should decide in the next little while.

Mr. Chairman: We will hear Mr. Johnston next week then.

Mr. Cordiano: The only problem with that is, when are we going to deal with this, down the road?

Mr. Chairman: You tell me, and I will tell you.

Mr. Faubert: That became the problem, and this is one of the things we are always faced with and the thing we were almost faced with on TVOntario. How can you establish policy at the same time as you deal with a single request? It becomes a very difficult thing. It is not fair to either one.

Mr. Morin: This is the second time now.

Mr. Faubert: This is the second time now we are on that basis. It is not fair to Mr. Johnston and his request if we sit and wait; we could be a year establishing a policy.

Mr. Chairman: Yes, but the other thing is that you never decide to establish a policy until the matter comes before you. You have a request. Why sit and deal with a policy from country X with regard to this, if you figure you will never get a request? That is why I think you often have to deal with it in the context of getting a request.

Mr. Faubert: I agree with Mrs. Sullivan that we have to do that. We have to sit down and establish a policy that relates to twinning, because I think there are going to be other requests on this basis from a variety of sources, but if we put this within it, we may never come up with a yes or no answer on this for a year. Do we want to put it in that context?

Mr. Breaugh: One thing I would like to remind you of is that there are several requests of this nature that have been dealt with previously. The precedent here would be, for example, that the province of Ontario is twinned with a province in Communist China. Do not ask me how that twinning process

came into effect. I never did see a motion to that effect go through any committee. I think it just suddenly happened. There is a request to the Ministry of Government Services, which is being processed, all on its own, and we have nothing to do with that.

What Mr. Johnston is asking us to do is a rather remarkable idea, that the assembly itself might do things, not a ministry, not a government, but the assembly. There would be some kind of program begun here where the assembly would get into some kind of twinning arrangement, but the request does not go from a government or a ministry but from one assembly to another. That is the specific request he wants to make to us. There are other requests for surplus equipment and things of that nature that are ongoing, and there is established policy in that field.

I do not think it is that difficult to suggest that we will hear what Mr. Johnston has to say specifically. We will probably ruminate for a while on whether it is a good idea to do this in principle. There are staff reports on how these other requests have been handled and the legalities and the niceties of it all that we can read. There may be other staff people who could help us draft an appropriate policy that would meet this request.

I am reasonably comfortable that Mr. Johnston could be accommodated at our next meeting and he would begin the process on whether we establish an assembly-to-assembly process that we could use in the future. It is the first request of its nature that I am familiar with that went to a legislative committee, but it should not bother us that we would now be faced with the task of establishing policy in this field. I do not think Mr. Johnston is anticipating that it will happen next week. I think he is quite knowledgeable that some other requests are being accommodated and that some are not. He is trying to find a way to put this on our agenda.

Mr. Faubert: I just have one other thing. The only thing you can trade are your own resources. What resources does the Legislative Assembly have? We have staff or some expertise, but beyond that, we do not have physical resources. I cannot even get it from my constituency office. How are you going to give it to Nicaragua?

Mr. Chairman: It reminds me of some other things. Anyway, the resources which we get are allocated in the budget for the Legislative Assembly and they get approved, specifically, by the Board of Internal Economy.

Mr. Faubert: I understand we had little circles.

Mr. Breaugh: There are actually several government programs run by various ministries that are included in their estimates, which have to do with international aid, international assistance programs, relief programs. We have some that are done within the province and we do have some that are done internationally.

Mr. Chairman: There are many questions that need to be answered before we come to some determination. We will listen to--

Mr. Cordiano: It is fair to say, though, that at the same time we have to look at each one specifically.

Mr. Chairman: Yes.

Mr. Cordiano: That is, essentially, what we should be doing.

Mr. Chairman: Yes. Okay. We will hear Mr. Johnston next week. Then we will decide after that what course we want to take.

Mr. J. M. Johnson: This committee is charged with the responsibility of taking over the members' services from--

Mr. Chairman: Yes, that is correct.

Mr. J. M. Johnson: Do you think some day in the future we could discuss the members' problems?

Mr. Chairman: Yes, we could.

Mr. J. M. Johnson: Constituency? Office? Any problems that the average member has pertaining to constituency or office?

Mr. Chairman: Yes, dealing with the member himself.

Mr. J. M. Johnson: It would be kind of nice to set aside some time to deal with that.

Mr. Chairman: Obviously there is consensus on that. We will ask the clerk to include that in our agenda. We may not have time in January, but after the February sitting, which is to be a short sitting, as I understand it, we will be asking the House leaders for time to be sitting for any number of weeks and we could include it in a discussion at that time.

Are there any other matters that you wish to discuss? No.

The committee adjourned at 5:16 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL
REQUEST OF NATIONAL ASSEMBLY OF NICARAGUA

WEDNESDAY, DECEMBER 16, 1987



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitution:

Johnston, Richard F. (Scarborough West NDP) for Mr. Breaugh

Clerk: Forsyth, Smirle

Staff:

Eichmanis, John, Research Officer, Legislative Research Service

Witnesses:

From the Office of the Assembly:

Mitchinson, Tom, Director, Information Services Branch

Somerville, Bill, Manager, Broadcast and Recording Service

Johnston, Richard F. (Scarborough West NDP)

From Anthony Long and Associates Inc.:

Riordon, Eric, Partner

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, December 16, 1987

The committee met at 3:42 p.m. in room 151.

ORGANIZATION

Mr. Chairman: This standing committee on the Legislative Assembly meeting will come to order.

We are going to have to rearrange the agenda just slightly because I am told Mr. Johnston is not available until 4 p.m. now. Maybe we can go to item number three--

Mr. Polsinelli: Mr. Chairman, on that very point, I have to leave at 4 o'clock. I believe that Mr. Faubert has to leave at 4 p.m., and I do not know whether Mr. Cordiano is coming or not. If Mr. Johnston is coming at 4 p.m., I am going to be missing the benefit of his presentation to this committee, as will a couple of the other members. I wonder if it would be appropriate to reschedule him at some other point.

Mr. Chairman: Is it possible for you to stay a few minutes after 4 p.m.? I understand that--

Mr. Polsinelli: I do not anticipate that his presentation will be shorter than a few minutes.

Mr. Chairman: I understand it will be short. He was going to make one short recommendation and then leave the greater length of it until the winter, until January or February.

Mr. Polsinelli: Yes, but as I understand how these committees work, and there is always an opportunity to ask the presenter questions. Quite frankly, if he is going to be coming back later on at a subsequent meeting to complete his presentation, maybe we can ask them to make the full presentation at that time.

Mr. Chairman: Would you mind leaving it until 4 p.m. when he arrives? We can decide at that time.

Mr. Polsinelli: I just wanted to put you on notice at least that a number of us have to leave at 4 o'clock. Perhaps if Mr. Johnston is agreeable he would consider coming back at another day.

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL

Mr. Chairman: OK. If it is OK with committee, then, shall we go on with item number three?

Mr. Mitchinson is available as the director of information services of the Office of the Assembly to speak about the Wawatay Native Communications Society and their request for extended use of the Ontario Parliamentary transponder.

Mr. Mitchinson, you are just coming forward yourself on this aspect?

Mr. Mitchinson: Yes.

Mr. Chairman: Do you want to make a presentation, Mr. Mitchinson, and tell us what the request is, and your particular recommendation with regard to it?

Mr. Mitchinson: Thank you, Mr. Chairman.

First of all, I apologize for the extremely short notice that you received on this request. I only received it myself a couple of days ago. I think it is explained by the fact that there has been a staffing change at Wawatay, and that accounts for the delay in getting the recommendation through.

About a year ago, the Wawatay Native Communications Society from northern Ontario applied to this committee for permission to use the Ontario Parliamentary transponder for one half hour on Sunday afternoons for native language programming in their communities. At the time, a delegation from Wawatay appeared before the committee, together with a representative from TVOntario, and myself.

The committee considered the request and agreed to permit the use on Sunday afternoons. I think the feeling was that it was a very worthwhile organization, and it was providing assistance to them. Otherwise, they would have to be out of pocket for renting the occasional use transponder. Also, it was at such a time on Sunday afternoons that there was no potential conflict with what would be being programmed from here.

At the time, the Wawatay people indicated that this was the start of what they hoped would be an expanded use of television as a communications tool for their organization, and that they had hoped to move to an hour.

This request that you have before you is to move from a half an hour to an hour, effective January 3, 1988. They also indicate in their letter that they hope to move to an hour and a half in September 1988, to two hours in January 1989, and to two and a half hours in September 1989. When I spoke to TVOntario about this to see--

Mr. Chairman: I would like you to limit yourself to the one hour at this point--maybe you could deal with the other ones later on, because otherwise it is going to be quite extensive.

Mr. Mitchinson: Very good, because that is exactly what TVOntario said. They said that they had no problem with one hour but if the committee was dealing with a long-term plan, they would want to have more time to think about it and to assess the ramifications. They have no difficulty, from their perspective in supporting the application to go to an hour. Certainly from our perspective as an operating unit, there are no new considerations that the committee need deal with. That is essentially it. It is the same service, but extended from half an hour to one hour.

Mr. Chairman: Questions? Mrs. Sullivan?

Mrs. Sullivan: Would they need any additional warmup time? They have a half hour warmup time now.

Mr. Mitchinson: Yes, they will.

Mrs. Sullivan: Would that be a full hour?

Mr. Mitchinson: No. You could add a half an hour to the total time, so that they would still require some warmup time. That is really a TVOntario requirement, so that they make sure that the signal is going out well. They would want a half hour before it started, then an hour, instead of a half an hour, and then a half an hour at the end. The programming time would begin at the same time, it would just go for an hour instead of a half an hour.

Mr. Chairman: Mr. Johnston?

Mr. J. M. Johnson: While we are only talking about a half hour, it is only common sense that in a short time we are going to be talking about an hour and a half or two--I think whatever determination we reach now, we are going to be looking at--are there any other groups or organizations that have indicated any interest in similar programs?

Mr. Mitchinson: No, there are not any organizations that have come forward. I think that this committee asked TVOntario and our group to develop a policy on shared use of the transponder. I think as part of that exercise we will try to identify for you the likely extent of potential requests. No other organization has approached me, with the exception of the Watson computerized axial tomography scanner campaign.

1550

Mr. J. M. Johnson: It was only a few weeks ago that we had a request from Whipper Billy Watson for their scanner program, which we supported.

I wonder if this would be an appropriate time when maybe this committee could set a policy that it would have the determination. We are granting them an extra half hour if we do that today. Then we could also reserve the right to set aside a few Sundays in the year for special events, if they do occur, without having to seek their permission. Would we put them at a disadvantage if we have to say that maybe twice a year we would need that program time?

Mr. Chairman: What you are saying is, you are prepared to give them another 25 hours or so, but in exchange you want to have a reservation whereby this committee could maybe give somebody else a couple of hours.

Mr. J. M. Johnson: Yes, basically just the situation we placed a few weeks ago, instead of having to seek their permission to do so. We would naturally have to give them advance notice, but would it disadvantage them to that degree if a couple of times a year they lost a half hour, an hour or an hour and a half?

Mr. Mitchinson: It is difficult to speak for them, but my hunch would be that, yes, it would disadvantage them. The only television they have in their communities is this half hour on Sunday afternoons. That is the only time they have available, and if there was any indication that it would not be available at a particular time, they would probably try to rent the occasional-use transponder and incur those expenses in order to keep their program on the air.

Mr. J. M. Johnson: At least, could we explore that avenue? I personally would be in favour of giving them the extra half hour, but I also feel that we should not be placed in the position that we have to turn around and ask their permission if something unforeseen should develop--not the Legislature--

Mr. Mitchinson: If it is the Legislature, there is no issue.

Mr. J. M. Johnson: I do not think the Sunday shopping issue would mean that we would be going back into the Legislature on Sundays.

Mr. Chairman: I do not know of this Legislature ever having sat on Sunday, after 100 years, and I am not sure when we are going to start to do that. I do not think the Legislature is going to interfere with that, but it means some overtime and so forth.

Mr. Morin: I think Mr. Johnson is right. The Legislature should always reserve the right to do whatever it wants.

Mr. J. M. Johnson: When we entered into the agreement, we had to live up to it. Now they want the agreement extended, time doubled. When you give something, quite often it is the time to make sure also that you reserve some opportunities for your own use or for the benefit of other groups.

Mr. Sterling: The only question I have about it, and I guess it will come at some point in time--and as long as there does not seem to be an immediate need by anybody else for the time, there is certainly no objection from my standpoint--is whether there is any accountability in some fashion back to the Legislative Assembly from the person who borrows or uses that, whether he is utilizing it with any degree of skill, whether people are actually watching or whether it is really providing a service out there. It is very easy to ask for something and get it if there is no accountability on the other end of it.

I do not want to have this particular group have to go to a great deal of expense or anything like that, but I would sure like to have some kind of idea what the success is with the program they are providing, because if another request does come down, I would like to know how many people it would be affecting and that kind of thing if we said, "I am sorry, you cannot use it on Sunday some time." Do we have that information now?

Mr. Mitchinson: No, we do not. I do not have that information, but I know they would be more than happy to come and make a brief to the committee. They have done that before.

Mr. Sterling: I do not think we need even a brief. I would just like to have a letter or something from them as to how widely it is being used, what communities it is hitting into and if, in fact, the programming has improved and all that. I think it is good to have some accountability back.

Mr. Morin: You have to see the north. You have to be there. You have to see for yourself that the only means of communication they have there is on radio. If there is a group that needs co-operation in that field, it certainly is the native people.

Mr. Sterling: Sometimes accountability is good for the organization too. I do not know who else they account to in terms of the funding of their particular organization. Is it a commercial organization at all?

Mr. Morin: No.

Mr. Mitchinson: No. Most of their funding, I believe, comes from the federal Department of Communications, the native affairs branch.

Mr. Morin: They are located in Sioux Lookout. I saw them when they first operated, they were just in a little cupboard. They had the radio and that was it. They just grew and grew and it is a good little organization. It is really a community-oriented organization.

Mrs. Sullivan: I think one of the things that is important here in relationship to Mr. Johnson's point is that if the time is extended now for the extra half hour, it is important for their own communications programming and information to the community that that hour be consistent. Taking it away from time to time in fact makes it far more difficult for them to offer the communications service that has been developed and is clearly a part of their longer-term program. I would think that if the decision is made to allow them the extra half hour, which indeed I favour, it should be a consistent decision. It should be there for every Sunday, and because it is a first-come, first-served situation, other groups would have to fit around this existing agreement.

I think that is very important. They have had the half hour, people in the communities who are receiving it are now used to that particular time slot and know when to tune in, and it is important to maintain that consistency.

Mr. Faubert: I have a question relating to the correspondence from Lawrence Martin signed by Judy Hamilton. This indicates that the extension to one hour is not the full extent of their plans, they are looking at another two hours or two and a half hours per week.

When we approve this, do we automatically imply we are going to approve in the future? Have we ever assessed the two-and-a-half-hour request, or at what point do we do that?

Mr. Mitchinson: No, the two-and-a-half-hour request has never been assessed. I would suggest that if you do approve the one hour, you make it very clear to Wawatay that any extension beyond that will come as a result of further review by both TVOntario and the committee.

Mr. Faubert: Another interesting statement here is that they are being funded for two and a half hours. Is that by the Secretary of State?

Mr. Mitchinson: They are being funded for the development of their programming but not for the transmission of the programming.

Mr. Faubert: Not transmission at this time.

Mr. Mitchinson: That is right.

Mr. Sterling: One thing that comes up is that, because our party may be the first to have a large convention of some nature, whatever it is, I was thinking at some stage of the game all three political parties might want to utilize this particular facility for a weekend so that they can have a proper policy conference over the weekend from and in various stages of the province. My concern about Sunday afternoon is that in a lot of cases, if you are having that kind of function, it would come in contact with this.

I guess I just get a little bit uneasy when you start to expand out and there is a reliance that starts to be built up on their part on the Legislature's generosity.

Mr. Chairman: I guess I would have no difficulty with reserving that

right to use it for some other purpose, providing, of course, it is not going to be used frivolously, and it would have to come back to this committee to do that. So there may be an opportunity, and you can specify once or twice a year. You just say that we reserve the right to use it in the future and then that would give the committee the option to decide some time in future, to weigh one against the other, whether there was a need or there was not a need.

1600

Mr. Mitchinson: Perhaps I could make a suggestion. I feel a little bit out of my league in trying to speak on behalf of the organization as to what effect it would have on the operation. It might be worth considering having them respond to that issue for you, in helping you to make up your mind. It may be that it is quite an acceptable condition. On the other hand, it may mean they have to go to rather great lengths to get around it.

Mr. Chairman: It is something the committee would have to decide at that time if it were to go down that road.

Mr. Sterling: How urgent is this?

Mr. Mitchinson: Unfortunately, they want to go on air for January 3.

Mr. J. M. Johnson: I would be prepared to make a motion to the effect that we would grant them the extra half hour, starting January 3, on the condition that they can accept the proposal we have set out. If they cannot, then we will have to deal with it at a later date.

Mr. Chairman: The proposal, of course, is that this committee reserves the right to take that away for a limited number of periods if the occasion--

Mr. J. M. Johnson: If the committee deems it necessary.

Mr. Chairman: Yes.

Mr. Sterling: What would their alternative be if we cannot possibly provide that time for them?

Mr. Mitchinson: They would have to see if they could rent the occasional-use transponder and pay for it out of operating funds. Maybe Bill can help me on this, but I do not believe they could use our transponder for half an hour and then kick over to the occasional-use for the other half. I think they would probably have to use the occasional-use for the whole hour.

Mr. J. M. Johnson: Tom, my motion would read that it not be for half an hour; suggesting it be for the whole Sunday.

Mr. Sterling: My question was, what if the reliance on our system becomes impossible? I do not know for what reason. I just wondered.

Mr. Mitchinson: I think there is a technical way around it.

Mr. Chairman: I see no problem with this because they are going to have the use of it. I see nothing in the immediate future whereby we are going to be asking to use that hour. Some time in the new year, Mr. Mitchinson, they

are going to come forth with a more elaborate proposal for two and a half hours.

Mr. Mitchinson: If they are asked to. At this stage of the game they have not been asked to do anything.

Mr. Chairman: We are not asking them to. I understand they spoke in terms of extending their period from one hour to beyond that.

Mr. Mitchinson: Yes. TVOntario wants to take a more thorough look at the ramifications of two and a half hours.

Mr. Chairman: I see. The flexibility is there and the committee can deal with it in the way it wants to some time in the new year if the request comes forth. Is everybody in agreement with that? Nobody opposes it? OK. Thank you, Mr. Mitchinson, with regard to that item. You are here for another item, too. Mr. Johnston is not here yet. Perhaps you want to go to item 2 with regard to the Ontario parliamentary promotion strategy. We have before us Tom Mitchinson from the Office of the Assembly and Eric Riordon.

Mr. Sterling: Mr. Chairman, I just saw Mr. Johnston walk in. I do not know whether he has other commitments after this time or not. Mr. Mitchinson is still--

Mr. Chairman: I did not see him walk in. I was introducing the other people. Now that he has come in, maybe we should deal with Mr. Johnston because I understand he is not going to be long. You can take the witness stand if you wish, Mr. Johnston. It is not often that you have a chance to be a prime witness.

Mr. R. F. Johnston: I apologize to Mr. Mitchinson for being so disruptive. I did not mean to be at all. I appreciate your adjusting things for me.

REQUEST OF NATIONAL ASSEMBLY OF NICARAGUA

Mr. Chairman: We have before us the member for Scarborough West (Mr. R. F. Johnston) to speak on the request of the National Assembly of Nicaragua for assistance. Do you want to outline the request? I think you want to narrow your scope today and make some suggestions and then we will deal with it more fully in the new year.

Mr. R. F. Johnston: Yes, I would, Mr. Chairman. Again, thank you to the committee for making adjustments here and to Mr. Mitchinson for ceding a place here at the witness stand.

If I could just place this in a very large context, I would then like to try to put it down to a very specific request to the committee which will not be as large as looking at the whole matter that has been referred to you from the board.

In the summer of 1986, I went to Nicaragua with a group of teachers, primarily to build a school in the war zone just near the Honduran border. Partially, as you know, around here we use our mouths a great deal and do not seem to use the rest of the our bodies much and I wanted to do something physical. I also wanted to go and see what was happening there for myself rather than just depending on what I had been reading. It was a very moving experience for me. I then tried to get a number of members of the Legislature

to come back with me to learn about Nicaragua at first hand and a number of us did go.

It is tempting for me, because I am very sympathetic to the regime there, to get very pushy about why I think this one is important, especially with the news I just learned today. One of the villages where we were building these schools was attacked several days after we left and 26 people were injured and six were killed. We developed friendships there. When you are in a war zone of that sort and you see innocents being killed, you obviously get very emotionally attached. I just learned that village was bombed this morning and we do not know if there were any survivors. That is the first bombing I know of by planes actually based in Honduras. Without doubt, a number of friends of our brigade will have died today.

It is very tempting to come at you with a very emotional pitch here for some intervention by a senior assembly like ours to help the situation in that country, but at this stage I would rather not. If I might, I will just give you a brief outline of what was requested when we went down as legislators.

No matter how much we protested, they tended to look at us as officials having official status, coming from this jurisdiction. We kept saying: "No, we are not. We are just here to watch and learn." They said, "There are some very practical things you can do," and we said, "We would love to take back any suggestions you have." A number of requests came for help from various ministries; that sort of thing.

The most interesting one for me as a legislator came from the assembly itself, which as you know is an elected assembly with a very high turnout of the population participating; well over 77 per cent, as I recall. There is a very large majority, not unlike our own situation here in Ontario at this point.

This is the first democratically elected government they have ever had. Democracy is very new to a country that has had dictators that have been imposed upon them and that have arisen from their midst for centuries now. Basically, they said that what they could really use some help with was the whole question of how a democratic assembly operates. Although they have a presidential system there and a system where the President of the assembly has much more power than our Speaker has, and although there are not necessarily a lot of direct parallels, they thought there would be a lot they could learn from us as an established assembly in terms of how the actual membership of a committee and of the House has an impact on what takes place in terms of the development of laws.

They came to us with two requests. One was just for straight equipment. They gave us a specific list of things they would like, from copiers through to typewriters and that sort of thing, the reality being that supplies are in such short supply there that they could use pencils at this stage, let alone typewriters and that kind of thing.

I brought back the request for that and for an exchange of members; that is, some of their members and senior functionaries of the assembly would come up here, people who would be in a similar position to Mr. Mitchinson. In their case, they also wanted legislative draftspeople to come up here to learn English because, as you may know, they have a substantial English minority on the Atlantic coast that has had no service, traditionally, because of the large Spanish majority and for which they are trying to provide some kind of service and access to the assembly. They could then come back, having watched

our House in session and our committees in session and perhaps be able to translate that a little bit in terms of their assembly.

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I took this request to the board last spring when we came back and it basically then produced the documentation you have before you in terms of what the precedents were for this or the constraints on a provincial assembly in terms of an interaction with a national government, especially one which fell outside of the Commonwealth or the association of French parliaments around the world. You have that before you and I do not think at this stage I would really like to go into the details of that, but I would like that occasion, if necessary. If you wish to proceed further, then I am going to recommend a day.

The board basically has transferred it to this committee. I made a presentation to this committee back in June as well, which of course ended when the Legislature was dissolved for the election. Therefore, there is no onus on this committee to deal with it. When I went to the board this fall after it had received this report back, I basically suggested that perhaps we should refer this to this committee to look at the whole question of whether an assembly such as ours should be involved with other parliaments around the world that may not fall within the two organizations we normally work through, the Commonwealth and the French association, and if so, what parameters we would establish for that. What would be the limitations we would obviously want to place on that kind of interaction and what policy suggestions could we try to develop to be returned to the board for it to deal with and to make some administrative decisions about?

I have a number of very specific ideas about that, which we can talk about, if you want, at a further point, but it seemed to me on reflection that we are perhaps a step or two ahead of actually having a major discussion of this concept. A lot of its ramifications are of real concern to individual members of the House in terms of how far you go, how you make sure this is in fact a democracy you are dealing with and not a military state and that kind of thing.

I thought the first step we should probably take and that the committee could naturally take as a body here--one of our problems with this has been that we have had no mandate. We were down there unofficially, at the request of the assembly but through a traveller back to our board, which did not feel it was its natural mandate. You do have the authority that has been brought to you to contact our federal government before we go any further on this and find out what it thinks the constraints are on an assembly in terms of involvement in this kind of assembly-to-assembly interaction, to see if it thinks this would run against our present foreign policy with the country involved in the specific case, or in general if it thinks this is something that should be outside the auspices of an assembly to do.

They know of course that governments like Alberta do government-to-government aid and government-to-nongovernmental-organization aid at this point. For instance, some of the money that went through the farmers' brigade from out west actually came through the Alberta government, but this is a very different matter. This is assembly-to-assembly kind of work that I am interested in and not government-to-nongovernment or government-to-government kinds of aid that might be involved. It would be specifically to ask them whether they thought this was appropriate or could be done constitutionally, and if it could be done, whether they would have any

advice for us in terms of who we should work with federally to talk about how to develop this kind of policy.

I know this is also of concern to the President of the assembly who I recently contacted and said we were running into all these procedural problems here. One of the things we have never done, because it was very much a spur-of-the-moment kind of request, is an actual official clearing with the federal government of whether we should proceed on this, but I could.

Rather than deal at this point with the substance of the request or with the prior questions of process involved in terms of how we would look at these kinds of requests in the future and, from the Legislature, in terms of what would be the role of this committee, what would be the role of the board and on what basis we would want to make decisions on this, my request to you today would be that the first thing we should do is make contact with, I presume, the minister, Joe Clark, and ask him if he could give us some advice as to whether he thought we had some room to operate in this area, and if so, who would be the appropriate federal authorities for us to deal with.

In casual conversations I have had with the Clerk of the House, for instance, he has indicated that there is a very active committee of the federal Parliament which does this kind of work on a federal basis. But because of the size of a place like Nicaragua, they might think that it would be better done from a smaller assembly like ours to a smaller assembly like theirs. They are the national assembly but there might be some means whereby we could work through them to do that kind of thing, or it may be that they will just say nyet--if I can put it that way--that it is not appropriate for a provincial assembly to do this kind of work.

Mr. Chairman: I suppose part and parcel of that would be the diplomatic immunity of those people coming from Nicaragua, whether they would have diplomatic immunity while they are here.

Mr. R. F. Johnston: I think there could be a number of questions like that, certainly for the parliamentarians. As you may have noticed, they have listed members of parliament from the ruling Sandinista party but also from two of the other parties in terms of the people whom they thought might come forward. Yes, there might be questions around that and security questions for those people. This is something I should have done before actually proceeding with this at all to the board. But coming back with my enthusiasm, which I am known for, I barged ahead instead.

Mr. Cordiano: I just want to say to Mr. Johnston that I think perhaps the request could be made through--certainly, it could be made by the committee. The Ministry of Intergovernmental Affairs could perhaps follow up on this to determine what the right procedure is coming from the Legislative Assembly and working through channels there to the Department of External Affairs. There are a number of ways in which the two ministries respectively work together.

We had a visit by the Vice-President of Nicaragua. I think some members of your party met with the Vice-President of Nicaragua.

I think the Ministry of Intergovernmental Affairs probably could pose that question, work through External Affairs and then report back to us. That is one option I would see as something that could be done to consider the question, whether it is within the framework of our foreign policy, if it falls within that and if federal policy allows for assembly-to-assembly from

the provincial level to take place. I think those questions could possibly be answered working through the Ministry of Intergovernment Affairs, if there are no objections from the members of this committee to proceeding in that fashion.

Mr. R. F. Johnston: Perhaps I might respectfully suggest that would definitely be one approach to take, but because I like the notion of this committee--we reformed things to establish this kind of committee--as slightly different in concept from the old members' services committee, I would also like to see some action taken by the committee directly. It seems to me that could be to an appropriate committee in Ottawa or it could be to the minister. The expertise of Intergovernmental Affairs is something that definitely should be accessed officially as well, it seems to me, at this point. I would welcome that kind of initiative.

Mr. Cordiano: I think further that the committee, having taken that step, then should come back and determine how to proceed in the overall framework and how to determine a policy from that. I think you are right in suggesting, and we contemplated this ourselves, that we are a couple of steps ahead before this committee could ever decide on a specific case. I know my colleague sitting opposite here suggested that in the last meeting. Certainly, we should be looking at a model for a framework for the kind of policy we want to develop as an assembly. I think that is going to take some time and some doing in the new year. I do not know when we will be able to do that, but certainly we should be looking at it down the road.

Mr. R. F. Johnston: I agree. Because of the way it is now evolving, I think we really have to come up with some kind of model. As you may recall, in my initial letter to the committee in May or June, whenever it was last year, I was proposing certain parameters for making these decisions, which would include the fact that it would have to be to an elected assembly, and only for assembly-to-assembly work, not to government. It would have to be demonstrably for pluralistic goals; that is, for the fostering of a multiparty approach as an assembly rather than a one-party state with an elected assembly, and that we would clearly have to have some external control in terms of human rights.

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I was suggesting in my letter that Amnesty International might establish the standards for us in terms of what it thought was the best acceptable jurisdiction with a legitimate assembly for that.

Those are just three suggestions. There are, I think, all sorts of levels of complication around this that need to be looked at and all sorts of possibilities. I think in some ways we should not be swamped by the complications. For a province like ours, which has, as a government, twinned itself with a province of China, which is fundamentally a Communist state, where there has been no development of pluralism in a political sense at all, should mean that many things are possible.

I am suggesting a much more restricted kind of notion of our assembly's role and that is only to deal with democracies that we can say are democracies, that have good human rights conditions and where we are making sure the money is not going to benefit the ruling party but is in fact going to assist the process, the assembly itself.

If the federal government says this is totally outside our bounds, then obviously it would not be worth our time spending the hours that might be

involved in trying to develop models to look at. On the other hand, if it opens it up as something that is possible, then I would be very happy to work with members of the committee to look at models that would apply to various potential jurisdictions around the world.

I think anybody who has travelled much in the Third World and has seen democracies that are trying to get started realizes the incredible weight of probabilities that are against them actually being able to survive as democracies. A senior assembly like ours, if it is seen to be possible within our federal government's purview, playing a role to foster that democracy and giving various kinds of tangible but also moral supports to that action, I think would be a very useful thing for us, and for individual members of the committee and the House to feel that they were playing a slightly larger role in terms of our often parochial interests in the province.

Mr. Cordiano: I think there is a question of just what role the Legislative Assembly will play, because I think we also have to define in all of that the role vis-à-vis the government, the Legislature and the government. I think in a sense you are going to have a very narrow or restricted area that the Legislature could operate under in those kinds of exchanges.

I think those are the kinds of things we really have to look at, and it is not very clear, because there are no precedents as far as I can see.

Mr. R. F. Johnston: None at all, from what I can gather.

Mr. Cordiano: None whatsoever.

Mr. R. F. Johnston: But there are some wonderful possibilities, at least to my mind as a parliamentarian, in terms of the role of our Speaker in this kind of action. The traditional roles of speakers have been quite fluid. It might be that we would want to vest a fair amount of our decision-making in that office, or it may very well be that with the development of this kind of committee this is where we would want that kind of decision or recommendation to come from to go back to the House as a whole to make some decisions on.

I agree with you. I think it opens up all sorts of problems, but some very interesting challenges to the Legislature as well, if the federal government says it is something we have the right to dabble in and if it can help us enunciate what the limitations of that are.

Mr. Cordiano: That is precisely the point, because that may be rather difficult as well. We should ask the question first, find out the answer and then proceed from there. I think that is what we could do next.

Mr. Chairman: Thank you very much, Mr. Johnston. We appreciate your coming before the committee. I do not think there are any further questions.

Mr. R. F. Johnston: If you do move in this direction, I would be happy to come back later on. If you decide you would like to move on the merits of this initially, then I would, of course, like to make some remarks perhaps just as a member of the committee in terms of how we might move as far as that goes.

Mr. Chairman: Just stay in your seat for a minute. Is there any particular recommendation that someone wants to put forth?

Mr. Cordiano: I think the first move we should make is simply to

forward the question to the federal Parliament and determine what the parameters are, and if, in fact, we can proceed beyond that. If that is the case, then we will come back and deal with the larger question at some later date, but perhaps we should answer that question first.

Mr. Chairman: Specifically, you are referring to the Department of External Affairs.

Mr. McClelland: I think Mr. Cordiano had a point, that the Premier, in his role as Minister of Intergovernmental Affairs, should certainly be able to assist in the protocol area. I think we should perhaps leave it somewhat open-ended in terms of the recommendation that we take, whatever steps we might want to further explore or advance the possibility without really boxing ourselves in.

Mr. Sterling: As it is getting very close to the festive season and if we ever get out of here--

Mr. Cordiano: It is up to you.

Mr. Sterling: If the government co-operates, we might be able to do that some day soon.

Mr. Chairman: If the federal government were to co-operate.

Mr. Sterling: I would just like a chance to think about this a little bit before we take any steps on it, and as we are going to meet early in January, I suggest we consider it first thing then. I have not had a chance to read the documentation over or even put in a mindset.

There are so many questions that come to mind. For instance, is the Legislative Assembly going to be perceived as the government of Ontario? Are we putting the federal government in an embarrassing position? Do we want to do that, if that is the case?

Mr. Cordiano: If I could just make a point here, my recommendation is that we seek some advice and counsel from the Ministry of Intergovernmental Affairs on how to proceed with that. Since we are treading in an area that is unprecedented, then perhaps we could seek their advice, at least on how to proceed, on how to deal with the federal Parliament.

Mr. Chairman: Do I understand, Mr. Johnston, that you have not had any discussions with the Premier, as Minister of Intergovernmental Affairs, or anyone of his staff with regard to this matter?

Mr. R. F. Johnston: No.

Mr. Chairman: It went directly from you to the Board of Internal Economy, I think.

Mr. R. F. Johnston: The Premier knew of it, but only because we were talking about it. If I could substitute on the committee, perhaps I should speak as a committee member, in an unusual seating arrangement here.

It seems to me that all we are asking for now is information, and I am not sure that we need to be too concerned about delays in terms of sending off those kinds of letters. There are two avenues that seem to me to make more sense. One is for Intergovernmental Affairs to deal with Department of

External Affairs in terms of what the process is from that perspective. The other is for this committee to contact the appropriate federal committee which deals with these matters.

Although we are constrained in the terms of our precedents and the way we have operated in the past to dealing with the AIPLF--Association internationale des parlementaires de langue française--and dealing with the Commonwealth, the federal Parliament does, in fact, deal with a number of other groups that fall outside of that. They have experience in this area already. It seems to me there are two levels to look at. One is what the federal government's perspective is on this and the other is the federal Parliament's views of our getting involved in this. I think you would be wise to get both views at this stage, to have some idea as to what and whether or not there are any means of proceeding and whether or not it is totally outside our purview.

Mr. Chairman: Would there be any opposition to a letter going to the Premier, as Minister of Intergovernmental Affairs, posing the question of getting some input?

Mr. Sterling: Nobody is going to answer any letters over the next two weeks anyway, let us face it. I would just like a chance to think about it over the next two weeks while I am in other places closer to Nicaragua than I am now. I am not sure whether I am in favour of getting involved in this kind of a situation, whether I, as a provincial member, think it is within my mandate to be involved this way or not. I just want to think about it, that is all. Although it has been on the table to some degree, we were only referred this, and I would never have thought I would be in the middle of making a decision as to whether or not we get involved in this thing.

Mr. Cordiano: We are not making that decision.

Mr. Sterling: We are in a way.

Mr. Cordiano: I think what we are doing is simply determining how to investigate this.

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Mr. Sterling: All I am saying is that I recognize nobody is going to answer any questions and probably few letters are going to get written in the next two weeks.

Mr. Cordiano: I would be perfectly willing to come back in January and then make the request. That is not a big deal. That is fine. We can take time over the next couple of weeks to consider how we proceed. That is fine.

Mr. R. F. Johnston: I have no problems with it being deferred until January. I am making the request now because I am not sure I will be able to be before you for that meeting to suggest that the first step we take, if we take any steps, rather than dealing with the matter of the substance of the request and whether or not we as individuals think we should be involved in it, be to find out whether or not there is even a capacity to do that and therefore touch the federal jurisdiction in at least those two ways that I suggested.

Perhaps staff in the Clerk's office can find out what the appropriate bodies might be and how you would deal with Intergovernmental Affairs, etc.,

before you come back so you have some idea. Although I understand Mr. Sterling's concerns about this and although this is a parliament which has already decided to deal with human rights issues on a national basis in the past--something to which Mr. Runciman was referring recently in the House; the Board of Internal Economy has approved funds going on an ad hoc basis to the Bahamas and other governments in terms of equipment going to them--there has been an ad hockery about all of this which I think it is time now for us to evolve past and to decide upon how we are going to deal with it.

Whether or not we actually deal with the substance of the Nicaraguan assembly's request, if you think that falls within the ambit of what you want, I think you, as a committee, are very much struck with the requirement to make some decisions about what kinds of international interactions we are going to have. They do exist and it is time that we formalized that more. Taking some time to think about how we might go at this step by step to determine the parameters is something I would be in favour of.

I am just not sure if I can come back to your committee because I might be involved in one myself. I suggest you just take the first step of making sure that anything you discuss is within the capacity of a committee such as this to deal with and then choose your next steps after that.

Mr. J. M. Johnson: It has been pretty well summed up, Mr. Chairman. I think it is the consensus of the committee that we leave it to the first week of January and I would support that.

Mr. Chairman: OK, that is the agreement of the committee. Thank you Mr. Johnston for coming before us today and we will deal with this early in January 1988.

Mr. R. F. Johnston: If you can let me know, I would be grateful. In case I can come down, I will substitute in.

Mr. Chairman: Okay, the clerk will let you know.

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL

Mr. Chairman: Next is item 2. We will again ask Mr. Mitchinson to come before us, together with Mr. Riordon, dealing, of course, with the Ontario Parliamentary Promotion Strategy.

Mr. Mitchinson: Mr. Somerville will join us too, if that is all right.

Mr. Chairman: The seats are probably softer up here anyway.

Mr. Mitchinson: Very briefly, Mr. Chairman, if I could just set the scene, then I will turn it over to Mr. Riordon to make the presentation. When the Legislature decided to bring television into existence in Ontario we began the process by working with the then standing committee on procedural affairs to develop a concept for television and guidelines for covering television. One of the first things the committee asked us to look into and to focus some attention on was a means of promoting the existence of television to as wide a cross-section of the population as possible; the feeling being that there was no point in spending all this money and going to all this effort to bring television in if the people out in the province were not aware that it existed.

In our 1987-88 estimates, the information services branch included funds

to retain the services of a promotion specialist to help us develop a strategy to start that process in motion. We have been working with Eric Riordon, from Anthony Long and Associates, over the last number of months in developing this strategy and I think we have come up with one that we hope can receive the support of the committee. After the committee has decided how it wishes to deal with it, then our hope would be to present a funding proposal to the Board of Internal Economy in order to implement the strategy.

If I can just turn it over to Mr. Riordon, he has some overheads to go along with the presentation.

Mr. Riordon: There were three overriding principles, if you will, that governed how we approached this task. They were: first, to make maximum possible use of internal resources in the broadcast group, which indeed are extensive; second, to be as cost-effective as possible; and, third, to involve the members of the Legislative Assembly in a constructive and, hopefully, useful way. Those influenced everything that followed.

What I would like to do in a fairly rapid-fire way, because I know your time is short, is, first, to outline what we are trying to achieve in terms of objectives, who we want to reach, then to outline three areas of strategy for reaching those audiences.

You will note we are talking first about heavy users or regular viewers of the service. We have said we want to enhance perception of the service's value to regular and occasional viewers, so as to establish a group of what will ultimately be heavy or regular viewers. Second, we want to develop higher interest levels among the light users to increase viewing frequency; to move them up to become heavy users, if you will. Third, indeed, we wish to increase awareness and motivate nonusers to tune in to the assembly's television coverage. In essence, we want to move nonusers to light and light to heavy. That is the nub of our objectives in terms of viewers.

In terms of operators--that means cable operators--we wish to reinforce the commitment of existing carriers to the service, associate a feeling of public affairs responsibility with carriage of the service, motivate operators not currently carrying it to do so, and finally to convince operators of viewer interest in the service and viewer perception of its value. That is how I would suggest the strategies be judged. Are we achieving those objectives?

We defined very precisely the target audiences that it would make sense to approach in the plan, and we will address those as we go through it. I mentioned that there were three, if you will, levels of strategy. The first level is what we call influencers, and that includes cable operators. The second level is viewers and the third level we like to address is packaging and naming of the service.

The first level, then, in terms of strategies, is influencers. The first group, and clearly the most important that we would like to address here, is the operators themselves. I will not spend a lot of time on this list of activities, because we will be coming back to all of them, but in essence what we are suggesting here is that a kit would be prepared. There is a model. It is the United States equivalent, called C-SPAN. They have a very detailed kit and we have learned quite a lot from observing the activity of that network in the United States.

We would prepare a kit, which would have a cover and a basic brochure; a newsletter is proposed twice a year, one for each session; a poster and

promotional aids for customer service representatives of the cable operators to help them sell the service, help them to do what it is we are doing; billing stuffers to viewers, and program schedule information, as much as that is possible, understanding that the House is not always predictable; a letter of introduction, in a press release format, which would allow the local operator to tout the fact that he is in fact carrying the Legislative Assembly television coverage; co-op material, which would allow him to add materials to his own advertising. Buttons always work. The Legislative Assembly already has a button. We are proposing that there be a broadcast button, if you will. Introductory video clips, if possible, by each MPP; we will come back to that. Educator materials and, finally, some kind of recognition of this public affairs responsibility. Example: a plaque that goes in the front office of the cable operator. Perhaps the MPP could, in fact, present this plaque to the operator with appropriate press coverage in the community. So that, then, is a kit to cable operators.

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The second audience we thought of dealing with in terms of influencers was, in fact, government employees. Here we were thinking of things like--very low cost items, I might say--advertising tags that could be tagged, for example, to ads that run for committee hearings: "Watch the hearing on channel so-and-so." Government employee publications, of which there are a number; one is called Topical. External government publications: the Ministry of Energy, the Ministry of Industry, Trade and Technology and various other ministries have publications that reach out, so we would hope to have materials in them. We have exhibits at government storefronts and other kinds of locations. All are low-cost, effective ways of reaching people who have a demonstrable interest in the affairs of government.

The media: We have already spoken about providing materials to cable operators, the press gallery itself, media relations--whenever there is news value. For example, the new audio system this year would have substantial news value, I suspect. Visitors to the Legislative Assembly themselves may be described as an influencer audience because there are 75,000 children, or 125,000 people in total, who go back to their constituencies. We would like to send them back with appropriate materials--indeed, brochures, buttons and so on--to merchandise the broadcast effort. They are, by definition, already more interested in watching it and perhaps telling their friends and others about it. Those are, indeed, children, adults and--more and more, we are told--business groups.

Finally, we have suggested that posters and highlight videos be produced for sale in the shop downstairs. Perhaps there is even a modest revenue potential there. So we think, again, that that captive audience, those people who come through here, is a good place to start, and they are, in fact, influencers.

The final and most important influencer audience, it seemed to us in a blinding glimpse of the obvious, was the members themselves. I mentioned earlier that, from a strategic point of view, it seemed sensible to us to enlist the support of the members who are in fact the product of this television coverage. So we have discussed in great detail with the broadcast group ways to facilitate contact between MPPs and their local cable operators. We want to ensure that each knows who the other is and, indeed, that contact can occur and does occur. There are suggestions in the plan as to how to do that. One of these would be that MPPs be supplied with copies of the kit that goes out and, indeed, receive copies of the letter that goes to the operators in their riding.

Cable operators, when we spoke to them, said that to run videos, highlights and that sort of thing on our community channel or, indeed, on our barker channel, promotional channel, there needs to be a community relevance. The suggestion here, then, is that the MPP himself or herself is indeed the community relevance and that honorary involvement--either produced here by the broadcast group or taped locally in the cable operator's studio--honorary involvement of the MPP is the way to do that. The MPP could indeed introduce a promotional video about the television coverage on the local channel. The MPP perhaps, time allowing, could participate in community call-in shows. I know that many of you already do that.

MPPs could host regular call-in shows or other types of shows on which would be aired new, updated highlights videos. Again, the C-Span people do all that kind of activity in the United States very successfully, very effectively.

Repro material could be provided for inclusion in the mailings which MPPs forward to their constituents, as I understand it, three times a year. Again, there could perhaps be small logo material or even advertising material which would easily go into an MPP's mailing and would say, in effect, "watch me on channel 34 in such and such a community."

Those, then, are the key sorts of strategic activities that we thought made sense in terms of the influencer audiences. Five of those audiences are identified there.

You will note that there is no mass advertising here. Every item is targeted very carefully for reasons of cost-effectiveness. Indeed, that approach carries over into our suggestions for the broader viewer audience. In discussing this with the broadcast group up front, we suggested right away that we identify population segments judged to have the best potential--that is, having the most to gain from exposure to the Legislative Assembly broadcast coverage. If we could identify those groups, then indeed it follows that mass advertising would not be recommended.

We talked about cost-effectiveness before. Here is why we think mass advertising does not make much sense here. An example: You are looking at a chart which illustrates the cost of one page in the major television listings books. Some TV listings books are not here, others are; the major ones are. One page, one time, black and white in 1987 cost \$20,000. That suggests that if we ran a 26-week campaign--say, 13 weeks in each of the two sessions, or even 12 weeks to cover the session itself--we are looking at over \$400,000. It is not sensible: too much waste, not targeted enough, in our opinion.

The recommendation, then, is not that mass advertising be used, although perhaps a limited one-market test could happen, but rather that activities be targeted to audience segments that we can readily identify.

The first two of those audiences that we can readily identify are regular viewers and occasional viewers. Thinking of regular viewers for the moment, we thought of the idea of affinity, of being a member, if you will. The Public Broadcasting Service does this effectively in the United States and, indeed, C-Span does it. Once again, there are successful precedents for the idea of affinity or being a member.

Current viewer loyalties--

Mr. Cordiano: Can I get a little more exactly what they do in that regard? I do not really understand how it unfolds as a practical matter.

Mr. Riordon: Let me go through the next point and perhaps that will clarify it. If it does not, I will come back.

Current viewer loyalties, we have suggested, could be cemented through direct on-air solicitation for membership. It is, "Write in to this address. Call this number. Be a member of the Legislative Assembly television coverage channel," just as PBS or TVOntario or C-Span has a group of members. As a matter of fact, the C-Span members--

Mr. Cordiano: C-Span does that?

Mr. Riordon: Yes. Indeed, they even meet.

Interjection: Hard to believe.

Mr. Riordon: In the latest issue of their newsletter there is a description of a meeting of these people in wherever it is, Amarillo or something.

Interjections.

Mr. Riordon: There is a core audience, and what we are trying to do is to enlarge that core. So it seemed to us, then, that members, if that is the term--

Interjection: Whatever.

Mr. Riordon: --could receive, for example, various of the proposed promotional materials, including perhaps something special: perhaps a layout of the assembly identifying where each member sits. Only members would have this. They would be able to follow from day to day who is speaking. I know there are, of course, supers identified on the screen, but they will be able to identify a little more quickly than others who indeed is speaking.

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It seems to us--a bit of jargon here, admittedly--that we could end with a brand-loyal group. There is already such a group, but we could cement and enlarge such a group by making them a little bit special. Indeed, if we did that, that core audience would offer opportunities for testing. We could mail them things, we could ask them things, we could telephone them. We could indeed talk to them about new potential programming; and long range, it is suggested that new types of programming might at least be investigated. More than anything else, we could reinforce among the cable affiliates--if you recall, this was an objective--that there is an interest out there; that, indeed, we got X thousand, or perhaps X hundred, replies when we asked people to subscribe or to be members. Is that OK?

Mr. Cordiano: Yes, that is very clear. I just did not think it was in fact done anywhere. I thought maybe you were just going forward without having any kind of example to base this on, but you tell me it is working in the United States. It is quite astonishing.

Mr. Riordon: Yes. Our point is that we think it is worth trying. It is not expensive to try, so let us do it.

Mr. Chairman: Mr. Johnson has a question.

Mr. J. M. Johnson: Are you through?

Mr. Riordon: No.

Mr. J. M. Johnson: Well, finish.

Mr. Riordon: OK. The second audience is occasional viewers. The point here is to avoid having the channel dark as much as we can avoid it, so that when people flip on by, as they do while sitting in their living rooms, there is something there to attract them. We have said that whether that is repeat programming, promotional videos, visual logos, news of some nature, we need to have material on the channel as much as possible to attract the shoppers as they go by with their little gadgets.

We have also suggested that info-mercials--that is, highlights videos--be scheduled not only on our own channel but on TVOntario, when that is possible.

Mr. Chairman: Mr. Riordon, if you would get down to the recommendations, I think that would be helpful.

Mr. Riordon: These are indeed the recommendations.

Mr. Chairman: More specifically.

Mr. Riordon: OK. We think the senior citizen group will be an important part of the people we will be talking to.

We think educators will be important as well. Here the recommendations, in addition to those already made, are that the broadcast group should participate in a TVOntario field test already under way; in the VPS program, which distributes videotapes to educators; in mailings to educators; indeed, in tour groups of educators already taking place in this building. There should be promotion to those groups and there should be videos distributed to those teachers before and after their tour groups visit the assembly. We suggest and recommend that associations of educators be approached with newsletters, with notice of relevant programming, with posters, with introductory kits and with videos, and naturally that would happen dans les deux langues.

We suggest that university-level educators be approached in similar ways--and there is detail in the plan on that--and that highlights videos again be very much part of the promotional effort that goes to university educators as well as to high school educators.

The fifth viewer group that we suggest be targeted is business. We suggest this be done largely through the tour groups already being scheduled and enlarged scheduling of business visitors to this building. There again, the kits and video sampling could be used with business groups, which, by definition, have an interest in government. That is why they are touring the place.

We have spoken, then, of marketing efforts to influence the groups, to viewer groups, and third, suggested that the area of packaging or, indeed, naming was part of this plan.

It seemed to us that there were seven criteria in terms of how to name this television coverage and how to package it. These were: that we needed to

connote the subject matter, the proceedings of the assembly; that we needed to refer to where it was coming from, whether it is Queen's Park, Toronto or Ontario; that the medium needs to be identified, television; that the name must work in both languages; that it needs to be adaptable to graphic form in both print and video; that the name needs to be independent from government symbology; and that it needs to be memorable.

We spent a lot of time and effort in structured naming sessions. We developed a long list of some 40 or 50 names, a short list of some 10 and we ended up with ONT PARL. We ended up with ONT PARL because it was, quite frankly, the best alternative of those that were developed, and there were, as I say, perhaps a dozen others on the short list. ONT PARL has equity among current viewers. It connotes origin, which we said was a criterion. It connotes subject matter. It works in both languages: ONT PARL and ONT PARL. It focuses, obviously, on the word "parliament."

We made one suggestion, which is that the one weakness was that it does not talk to the medium, so we said, "Let's add the word 'network' or 'réseau.'" The recommendation, then, in terms of the naming or packaging of the service is not that we go off in some revolutionary new direction but that we keep both the baby and the bath water, that it be called "Réseau ONT PARL Network" and that it be accompanied by a descriptor, which is: "gavel-to-gavel coverage of the Ontario Legislature, diffusion intégrale des débats de la Législature ontarienne."

With the committee's approval, those who execute this plan would move directly into graphic development, so that Réseau ONT PARL Network would end up as a logo, as a visual approach for print but, more important, for video, so that there would be movement in terms of a video logo.

Mr. Mitchinson suggested that the budget for these activities, which I understand to be the province of a different committee, fell into four areas. He suggested that staffing would be required. We recommended that a junior level, what we would call affiliate relations co-ordinator, would be the way to handle that; that, as somebody had to execute something, some fees for creative and whatnot be budgeted; that there were materials to produce and that maybe an advertising test in a local market, tracked carefully, probably through Environics, who did an earlier tracking study in June 1987, would be the fourth element.

The numbers which attach to those over two fiscal years are suggested as these. Basically, I think Mr. Mitchinson assumed a January or so start date, which may be ambitious, and indeed, that is how the numbers were computed. The plan or the thought was that most of the art work and preparatory material would be done in this fiscal year and then executed in the subsequent fiscal year.

That is the recommendation. Clearly, we are open to question or comment.

Mr. J. M. Johnson: I am at a loss to know why we are into this. When did the committee authorize this study?

1700

Mr. Chairman: Mr. Mitchinson.

Mr. Mitchinson: At one of the very early meetings of the committee, the instruction to us was to try to get on top of promotion. I think the

feeling was that we were spending so much time getting operational that we were not aware enough of whether the broadcast was actually getting out into the community or how important it was for us to do that in order to make this whole effort a success.

The budget for developing it was approved by the Board of Internal Economy in the last fiscal year, and that is just what has happened up to now, a modest consulting budget in order to develop this strategy.

Mr. J. M. Johnson: What is his cost to date?

Mr. Mitchinson: Approximately \$25,000.

Mr. J. M. Johnson: And we are looking at an annual budget of around \$165,000?

Mr. Mitchinson: I think we are probably looking at a first-year budget of something in that range. There are a lot of one-time costs, which are associated with any program that involves artwork and design. Once that is in place, then the ongoing costs are reduced.

Mr. J. M. Johnson: I am not sure I understand the philosophy behind it. I assume that we created a show of some interest for the public by having television in the Legislature. Now we are being told we have to sell it?

Mr. Mitchinson: I think the situation is that, without some type of program to make people aware that it exists, you are not achieving the kind of penetration into the population that you would like to have or that you feel you wanted when you installed television in the first place.

Mr. Riordon: Mr. Mitchinson, could I add some comments? A poll was commissioned by the broadcast service of Environics in June 1987.

Mr. Mitchinson: Actually, the government did it.

Mr. Riordon: The poll demonstrated at that time--I think the figures were--that nine per cent of the population surveyed at that time across Ontario watched the channel once a week or more, but that some, in the high 20s, watched it occasionally.

There is, therefore, 40 per cent of the population that had some exposure to it. I guess the key objective, it seemed to us, was to move those occasional viewers up into the nine, so that the investment that was made previously to get the thing up and running now would be amortized by people watching it.

Mr. J. M. Johnson: The only way you are going to increase the numbers of people who are watching any show is to produce a good show. If they do not like what they see, regardless of all the promotions by the pamphlets and things you give them--

Mr. Cordiano: It is a good show.

Mr. J. M. Johnson: I know. I just cannot understand why you are considering spending \$165,000.

Mrs. Sullivan: I have a couple of questions and I suppose that they may well go back to when the first discussion of this project was undertaken and, of course, I was not a member at that time.

I would like some additional background on why we need to promote. How many cable operators now carry the legislative service? How many do not? What is the geographical analysis of where it is carried? What do we know about the viewers?

For instance, a major part of the presentation related to senior citizens watching. Do we know that to be a fact or is that just a premise? What do we know about the cable operators who are carrying it now and what is the effect that the legislative channel or broadcasting has on their other programming? Is that a selling point, is it a marketing point on our behalf or is it something that simply does not matter?

There is another thing that I have some reservations about. There are a couple of things that were included in the presentation that I would like to hear comments on. Many members now already do have cable television shows. By the nature of being members, frequently the content of the shows which members are producing may be partisan. It seems to me that the integrity of use of the legislative programming has to be maintained and the nonpartisan nature of anything associated with the legislative channel has to be maintained and emphasized.

That was one thing. The other situation relates to the nature and location of cable stations. members' ridings do not necessarily overlap specifically with individual cable operations. There may be one member whose viewing area would cover three stations, which would be overlapped by other members in addition.

Another question related to the educational programming you are recommending and the legal ramifications of taping the programming for educational purposes.

Mr. Mitchinson: If I could respond to a couple of those, at least on the programming side you are mentioning the fact that members already have programs in their ridings. This is not meant to replace that in any sense.

What we are talking about with the use of video involving members would be to produce a generic promotional video of the existence of television--nothing to do with the content of what is there--and then work with individual members to do a front piece to that video. The front piece would target to your individual community, but the point of the video would be to show people within the community that there is a channel that they can turn on, that they can watch television. It is not to replace the programming that you are doing.

With respect to the issue of whether we know whether seniors are interested, I think we have a pretty good idea as a result of 10 questions that were added on to an Environics Focus Ontario poll back last spring by the ministry that is responsible for advertising. They allowed 10 questions to be attached to one of the polls, talking about viewership.

What came out of that survey was something that Eric mentioned earlier. We were surprised at the level of awareness of television that there actually was out there. Close to 40 per cent of people who had access to the broadcast answered that, at least occasionally, they turned it on once a week.

One of the other results that came out of it about the public, as quoted by the Environics people, was: "The survey indicates that the public clearly likes the broadcasts. A full 40 per cent of those who watch the proceedings

say their interest in the provincial government has increased as a result of the broadcast." So I think we see it as an effective tool.

One of the things specifically that you raised about seniors is that when the demographics of the population were broken down in these questions, it did indicate that seniors were more likely to watch, for some obvious reasons. They are available and they have more spare time to do it, but also, I guess, they are affected by government as well.

Mr. Riordon: They are in fact 30 per cent more likely to watch than the population as a whole.

Mr. Mitchinson: I think there is some evidence to point us to the right target viewer audience. That is what this strategy is attempting to do, to make sure we are not just recommending that money be thrown at TV Guide but rather to take some very specific programs and direct them at the people who are most likely to want to watch.

Mrs. Sullivan: Can you go back more to how many cable operators are now carrying the programming?

Mr. Mitchinson: I think we are on approximately 95 cable systems, covering approximately 85 per cent of the province.

Mr. Riordon: I might say too that we did talk to a number of cable operators in the development of the plan, prior to its development. Some of the ideas came from them. The idea of membership, for example, came from the president of the Ontario Cable Telecommunications Association. We also attended their convention and spoke to many of them; so this was not created in a vacuum but rather in consultation with the operators.

Mrs. Sullivan: What about the air time? When are they airing the broadcast?

Mr. Mitchinson: They air it live. They have a dedicated channel for the broadcast. They air it whenever we produce it.

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Mr. Mitchinson: They air it live. They are the dedicated channel for the broadcast. They air it whenever we produce it.

Mrs. Sullivan: And then they repeat.

Mr. Mitchinson: And then they repeat. That is another thing that came out of the survey. There was a significantly larger audience in the evening. I think the committee's original decision to reprogram has turned out to be a very good one, because we are the only jurisdiction that does do that and it seems to be working. Interestingly, too, there was quite a strong preference to the House over committee.

Mrs. Sullivan: I do not understand that.

Mr. Chairman: I do not either. I take exception to it. I know everybody has been watching us.

Mr. McClelland: Actually, perhaps it is predictable that Mrs. Sullivan asked most of my questions. I was particularly interested in the demographics, but I have got one follow-up on that.

In terms of your population, nine per cent are once a week or more and 20 per cent occasionally. What would be your projections, without getting into the demographic breakdown, for the first year and second year? Do you have a target that you are looking for in terms of increased audience?

Mr. Mitchinson: Personally, I have not thought in those terms. I am not sure what is realistic or what is not.

Mr. McClelland: It more or less follows up from Mr. Johnson's question. If we are going from \$25,000 to 165,000, what is the return? If we are at nine and at 20, what do we expect to see in terms of return? Also, part and parcel of that is the demographics issue that Barbara raised in terms of our getting at an audience that has a need. Are we meeting some other secondary service as well, particularly for those people who are ageing, shut-ins and so on? I know if you do not have that data then you do not, but I would be very interested in knowing what we are looking at in terms of the future.

Mr. Riordon: I think that is a point very well taken. If possible, objectives should be quantitative. We did suggest that the thing be tracked, probably through subsequent waves of the same study, which is the Environics Focus Ontario study. We have not at this time quantified the objectives. That is a good point and I think it can be done; I think it should be done when the plan is executed.

Mr. Mitchinson: The government people who did this poll have expressed an interest in following it up, although they would not commit themselves to doing it free. So one of the budget items that Eric identified was the cost of a follow-up poll, just to see how effective the strategy actually is after it is implemented.

Mr. Breaugh: I want to apologize. I am currently in the middle of the estimates in the Ministry of Housing down the hall.

Mr. Chairman: I hope you got a few units built while you were there.

Mr. Breaugh: I did want to drop in for a moment. I read this this morning.

I must confess that the first thing was that I was kind of taken aback. When did we ever commission all of this stuff to happen? But then the mind starts to go and I came back to reality. I do recall that we had said initially, and I think it still holds true, that part of our responsibility is to try to assess how much use people are making of this and what we could do to better utilize the system we have in place. The more I think on it, the more comfortable I am with what is being proposed here.

I am not quite sure we are all ready to approve this idea right now and spend the money and go do it, but I think there is a need of responsibility when we are putting as much money as we are into a production facility. It is not exactly a cheap operation. Governments do not usually do this, but I think it would be unique if we now tried to assess whether this is having an impact, whether we are utilizing it well, whether people are actually interested in and aware of the television coverage that is provided of the Legislature.

I have watched a little recently, and although we are far better than most jurisdictions in terms of a presentation which someone could sit at home and watch and understand, there are still some occasions, I am sure, when they

are sitting at home and see the little crawl on the screen saying, "The members are being called to a vote," and it is obvious to the world that the members are leaving the chamber and nothing is going to happen for the next hour and a half.

We avoided trying to have a commentator or something, but I think we are struggling with that. There are times when it just begs for somebody to come on and say, "What is happening here is we are trying to gather up people from committee rooms all over the building and agree on whether they are having a vote today at 4:15 or what," and then play the wonderful music that Mr. Somerville selects for the next hour and a half. I think there is a little bit of work there.

Part of what I liked in this report was that there was at least an exploration of how you could use the facilities even better than we are doing. I am uncomfortable with the notion that we would put ads in TV Guide saying, "Watch the Ontario Legislature live," because that is not always true. But I think we have to utilize the system better than we are doing. We have a tremendous capacity here. We were discussing briefly on previous occasions whether we could use the system to advertise committee hearings, for example. Can we explain things to people?

I think Mrs. Sullivan hit the nail on the head. There is a fine line that must be walked here between what has the potential to be a real propaganda machine for whoever is forming the government, or the opposition parties getting on and really hammering. I think we have walked that line before and we certainly provide occasions when all three parties have free time broadcasts, for example on the CBC, so I do not think we should back off that quite as quickly as I initially did. I would like to see us take these recommendations, think about them for a little while and have some discussions among ourselves and with our staff people on what is for real and what is not.

The basic principle I still adhere to is that having put in place a very expensive television broadcast system, we now have an obligation to continue to test the waters to see whether this is worth while. I know this might come up with a result that nobody wants to hear at some point in time, that we are spending \$4 million or \$5 million a year to run a system that nobody is paying any attention to.

I think we have to do two things, in this order: first, continue to assess whether this is worth doing. I believe it is but I would like to see some hard numbers that establish that. Second, I would like to see us expand as much as we can into a better utilization of the facilities and the system we have. I think we use our system better than anybody else I have seen. That is bragging a little bit, because I had a finger in the pie as it went through, but I am really pleased.

For example, we do a little video explanation of the proceedings every day. I think it is getting a little dated and maybe we could do a new one, but nobody else does that. That is a plus. We could do more explaining of how the process works, what is going on now, explaining the funny old parliamentary traditions that cause incomprehensible things to happen, and just utilize the equipment and the broadcast facility that we have as much as we can.

It might be a little premature to start voting on these matters today, but I would like us to keep them on our agenda and not lose track of them. It is an important part of what we did when we decided to broadcast these proceedings.

Mr. Chairman: Mr. Mitchinson, is there any particular urgency to this?

Mr. Mitchinson: No, I guess not. There is very little we can do right now with the resources we have and without a formal direction to move in a certain way. We would encourage the committee to try to come to terms with how it wants promotion to be handled. We are chomping at the bit, getting ready to go, but it will not happen until the committee gives us some direction and the funding is in place.

Mr. Breaugh: Could I make a suggestion?

Mr. Chairman: Yes, and then Mr. Somerville.

Mr. Breaugh: I am going to leave you now anyway. I will leave you in peace for the rest of the afternoon.

I would just like to suggest that you try out many of the ideas that are in here that are not going to cost us a whole lot of money within the current operating budget. If you want to fly those ideas before the committee before you actually do on-air stuff with them, that probably would be advisable. I do not want you inhibited by anything, really. I would like to see what you can do with this system.

I think there are some controversial things that have to be ironed out by the politicians here about whether we advertise or poll or do things like that. Short of things that are going to involve hiring a whole lot of extra staff people and spending money that is not approved yet, if there is an operational idea that you would like to try now with your existing staff and existing budget, you could write that up, bring it to the committee and keep us informed of what you would like to do and see how much expansion could be done with the staff that you have.

1720

Mr. Mitchinson: One thing we could do, I think, following up on my explanation for the members' use of the video, is to do a sample of a member, but Mr. Somerville probably has more ideas on that.

Mr. Somerville: On a point that Mr. Breaugh raised, we are in the process of producing a new introduction in January. However, an educational program is in the plan. Somebody specifically mentioned advertising committees. We have done that in the past; we did it last year. The clerk just gave me a notice of another one to be advertised next week.

If there is any urgency in this thing, a lot of the promotional ideas have to be tied in to the opening of sessions. We have to get the information produced before the session and have it on people's desks, hopefully within a week before the session opens, so they are ready for when we go on the air again. We have two windows, spring and fall, to make people aware.

I think you should also be aware that the five or eight new channels just licensed by the Canadian Radio-television and Telecommunications Commission make more competition for us. In the proposal, we are mainly trying to get to the audience through a different medium, mainly print, handouts, flyers and billing stuffers. We are trying to attract people who do not necessarily flip through the dial.

Mr. Mitchinson: We are certainly trying to be very low cost. It may

be this \$163,000 sounds like a lot, but then you figure that just advertising in the TV Guide alone is \$20,000 a week. They are all very expensive. You can get into very expensive ad campaigns.

Mr. Somerville: There was one staff salary in here, but the rest was all for printing a brochure, a poster, a handout or a guide, things that would be given away. Hopefully, they will be retained and used at a later date.

I should say that other assemblies are doing similar things. If you visit Ottawa, they have a brochure on the television coverage, and Quebec has one. When you package all these items together, it seems like a lot of money, \$150,000, but each item is a pretty small cost until you add them all up.

Mr. Morin: You are talking about how many hours a day of coverage? Is it from early in the morning until 11 o'clock at night?

Mr. Mitchinson: Generally on Tuesday, Wednesday and Thursday, it is from 10 in the morning until about 11:30 at night. On Mondays, we do not start until 1:30 with the House broadcast and it goes until 11:30. Then on Fridays, we start at 10 and we just program depending on how many hours of committee broadcasts we have recorded that week. So sometimes it goes on late and sometimes it is--

Mr. Morin: How many additional staff do you think--

Mr. Mitchinson: For this promotion? Just one.

Mr. Morin: That would keep the coverage on television? As the gentleman mentioned a minute ago, for a 30-second clip, you would be able to have coverage the whole day?

Mr. Mitchinson: Yes.

Mr. Morin: With one additional staff member?

Mr. Mitchinson: Yes.

Mr. Somerville: To produce all the material, we would use existing staff. The one additional person is to handle all the mailing and the telephone.

Mr. Morin: So there is no co-ordinator involved in recording the program?

Mr. Somerville: No. I should mention another part in the development of this plan was to utilize the staff between sessions. We have this facility and a lot of it is tied up in the chamber, so between times when the chamber is not sitting we would use that facility to produce these programs.

Mr. Morin: Use the MPPs free of charge.

Mr. Somerville: Right. The success of the program depends on the MPPs.

Mr. Chairman: If there are no further questions, I want to thank all of you for coming before the committee today. The committee can discuss this further in January, February or March, whenever we have an opportunity to discuss it further. I presume you people have the latitude to make changes

within your budget for things to improve as you go along; not major changes, but minor ones that you think enhance the broadcast. So there is no problem there.

Thank you again for coming before us. Particularly, I want to thank Mr. Mitchinson for his work. I understand he is going to leave the office as director of information services for the assembly and will now go to the office of the Information and Privacy Commissioner as the administrator there. I want to thank you for all the work you have done here over the years and wish you the very best in your new assignment of responsibilities.

Mr. Mitchinson: Thank you very much, Mr. Chairman. I have really enjoyed my time here. You will not get rid of me. I will be back here with the information and privacy commission. I will have a lot of involvement with the Legislative Assembly committee and I look forward to it.

Mr. Chairman: Thank you again. I do not have anything further to discuss, except one thing, and then we may want to go in camera for a couple of minutes.

With respect to the ads we placed in the various newspapers with regard to the hearings on Bill 1, the Members' Conflict of Interest Act, we decided to place them, as you recall, and we thought there was a price tag of around \$13,000, \$14,000 or \$15,000. Then the question came up whether we should have them in both French and English and we decided to place them in both languages. The amount was somewhere around \$30,000 once we did that.

What we should do in the new year some time is look at the kind of advertising we want to do, when the committee is going to have public hearings, whether we want to have them all in French and English or whether we should have them in English in English newspapers and in French in French newspapers and so forth.

There may be ways that we can be a little more frugal and save the taxpayers some money, if that is what you want to do, but I think we should look at the overall policy of what we want to do in the future. We had to make a quick decision. We surveyed each of the parties, one person within each party, and we went ahead with putting them in both official languages, but we should look at that in the new year.

Mr. Cordiano: Was that the reason for the additional cost?

Mr. Chairman: Yes.

Mr. Morin: I find this extremely exorbitant. Surely there must be a survey that exists within newspapers so you would publicize in English in areas where English is the dominant language, but if you go to other areas, like Ottawa, for instance--Le Droit is mainly read in certain parts of Ontario but the Ottawa Citizen is read by many francophones. To me, it would be common sense that it should be in both official languages in the Citizen, but in places--and I think of Fort Frances and Amherstburg; perhaps not Amherstburg because you have quite a few francophones there--surely there should be a survey of some sort that would be able to cover the areas where we know we have a large majority of francophones. For the rest, I do not think it is necessary.

Mr. Chairman: Yes, I guess there are essentially three options. One is to put English in English newspapers and French in French newspapers. The other--

Mr. Morin: Except, you see, certain newspapers do not cover the whole of Ontario.

Mr. Chairman: Yes. The other option is to have French in all and English in all together. The other is to do, as you are just saying--

Mr. Morin: It would be français.

Mr. Chairman: --to do them in both languages in those areas that demand them, which have a high ratio or a proportion of both, and only French in those areas almost exclusively French and English in those areas almost exclusively English.

Mr. Morin: Yes.

Mrs. Sullivan: Is there a requirement under Bill 8 that would mean that we indeed have to publish in designated areas in both languages for the assembly services?

Mr. Morin: That is a good question.

Mr. Chairman: I do not think Bill 8 addresses the advertising for the assembly for the various committees, if I recall correctly.

Mrs. Sullivan: No, but it does not talk about provision of assembly services.

Mr. Morin: I have no idea. We should check that out.

Mr. Cordiano: We should check that to make sure.

Mr. Chairman: Yes. We will have the clerk or Mr. Eichmanis, one or the other, check this out and we should discuss it some time in the new year.

Mr. Cordiano: Do we have any tentative scheduling for when the committee is sitting? Did we deal with this matter? I have a schedule that suggests we are meeting as a committee starting January 4.

Mr. Chairman: The Tuesday right after new year. Is it January 4 or 5?

Mr. Cordiano: It is the first week in January when we come back here.

Mr. Chairman: Yes.

Mr. Cordiano: Are we sitting that week?

Mr. Chairman: Tuesday, Wednesday and Thursday and then Tuesday, Wednesday and Thursday of the following week. We also have another week scheduled because we have to finish it and review it. We had hoped originally that we would finish within two weeks, but the clerk asked for a third week in case we had to go on.

We had permission to sit because, as you know, there was a general consensus. The House leaders agreed that they wanted this legislation back in the House when we come back on February 8. We should have enough time to deal with it both when the delegations are coming before the committee and with the bill clause by clause.

Mr. Cordiano: As it sits now, we are meeting Tuesday, Wednesday and Thursday of the first two weeks.

Mr. Chairman: Yes.

Mr. McClelland: Tentatively.

Mrs. Sullivan: What about the third week? Is it tentatively Tuesday, Wednesday and Thursday?

Mr. Chairman: It is tentative, if we need it. We are flexible within those times. All they do is give us the weeks to sit. The committee can change those. If we found in the second week that we needed one more day to finish it, we could finish it the second week.

Mr. Morin: Is it four days a week?

Mr. Chairman: No, three days, Tuesday, Wednesday and Thursday. We could sit a fourth day if we wanted to, but at this time--unless you want to change that. If you want to make it four days a week, we can make it four days a week.

Mr. McClelland: I am delighted to have at least January 4 off to do a little catching up elsewhere. I guess we could monitor it that first week and see how things are unfolding and whether we need the extra day in the second week.

Mr. Chairman: OK, sure. I want to welcome you to the committee, Mr. McClelland.

Mr. McClelland: Thank you.

Mr. Chairman: I am sure you have a lot to contribute and we look forward to working with you.

The committee continued in camera at 5:33 p.m.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

MONDAY, JANUARY 11, 1988

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. J. M. Johnson

LeBourdais, Linda (Etobicoke West L) for Mr. Morin

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel (French)

Klein, Susan, Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, January 11, 1988

The committee met at 11:22 a.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: I call the committee on the Legislative Assembly to order. As you know, there are a few things we need to deal with. First, we have the Attorney General (Mr. Scott) with us this morning to go through the bill with us. Second, we have some other soundings, shall we say, on people who may be interested in appearing before the committee. I thought we would deal with that immediately after we have the Attorney General go through the bill with us. Then this afternoon at three o'clock we will have the Honourable John Black Aird as the commissioner appearing before us.

If you have any comments, we might be able to entertain those at this point. If not, we will ask the Attorney General to go through Bill 1.

Mr. Breaugh: Just one point, before we get too far into it. I have tabled with the clerk of the committee the amendments to the bill that we will be proposing. They centre basically on two areas. First, we believe the commissioner should have, in some fashion, the right to order some divesting. The second area we have included in our amendments is that there ought to be some way of registering lobbyists and acknowledging that and keeping a record of it.

I put the amendments this morning because I think it would be helpful in the course of the process, from everybody's point of view, to get amendments that are substantial from members of the committee as early as possible. Looking through the discussion paper, I have a sense that we may see some amendments from the minister. Because the nature of the bill is a little complicated, the earlier that people can put forward the areas they want to amend, the better off we will be. I suspect most people will take the same attitude I have.

I really do not care about the wording of the amendments. There are a couple of areas I think are important for us to deal with. If early notice would allow staff of the ministry, for example, to do some rewording so that we would have similar amendments and we could put them together and accomplish the same thing with a different set of words, I would be more than happy to do that. So I put our amendments forward. There may be some alterations to wording or deleting certain sections of the act or things like that, but as it stands now, those would be the areas where we would move amendments in principle. I think it would be helpful if we could get the amendments from anybody who is going to move amendments as early as possible so that we can consider how we might do this.

I am aware that moving an amendment in one section of the act sometimes causes ramifications all the way through. We have put ours forward. I urge others who have amendments to major portions of the bill to let us know as soon as you can where you would like to move those amendments and then perhaps we can proceed in a little more orderly manner as we go through this.

Mr. Chairman: Thank you, Mr. Breaugh. We have those amendments before us.

Mr. Sterling: I appreciate Mr. Breaugh putting forward his amendments. We are presently having a number of amendments to the bill drafted on behalf of our caucus and I will indicate generally where they lie.

One will be in a divestment area. Another will be in a more distinct drawing of the lines between a cabinet minister and an ordinary member. The third will be broadening the definition of conflict to include not only cases where a minister is knowingly acting in his private interests but also cases where there is a reasonable assumption by the general public that there is an attitude of bias on the part of a minister in terms of the matter he is involving himself with before cabinet. The fourth will be amendments dealing with keeping records of exclusion of cabinet ministers from cabinet meetings or a committee of cabinet members, which is an imperfect part of this piece of legislation.

We also have a number of other amendments depending on our understanding of what the wording of this bill means. We hope to be able to get those forward as soon as we possibly can. We have thought through the policy areas, but we have not necessarily got the wording drafted at this time.

Mr. Breaugh: The only reason I want to put forward our amendments as soon as possible is that I think this is the kind of legislation where, if it is at all possible, we should try to get consensus on it. I really think this type of legislation works only if everybody agrees it is a fair and reasonable way to proceed. We did not put a lot of amendments together because we had made our position known in previous debates.

I do not think it is any secret that a lot of things Mr. Sterling just mentioned we agree with. It may not take an amendment, for example, to find some process whereby, when a conflict is declared, somewhere there is a record of that and the public can determine that the minister did not just walk out of the room but that someone kept a record that he or she did not participate in that debate.

There are a number of other areas that are of concern to us. I might just as well get this on the record. I am rather unhappy with the paper process. I took the time to go through the public declarations that have already been filed, a kind of dry run at this legislation. It tells me a little bit, but it certainly does not give me very much in the way of pertinent information. It seems to me that the first runthrough of this did not exactly succeed in putting on the public record exactly what might be considered pertinent information. I think there will be some looking through the regulations, how the process actually works, what becomes a public document and things of that nature. It may not require amendments to the act. It may require something different.

Mr. Chairman: Let us keep those things in mind. If we can get the amendments in as soon as possible, Mr. Sterling, it would be helpful for the committee so that we do not come up with any great surprises and set the work of the committee back a few days. Mr. Scott, you have the discussion paper and the paper has been circulated to members of the committee.

1130

Hon. Mr. Scott: Let me begin by saying that in cases where I did not hear them, I have read the speeches that were made at second reading of the bill, which contained a number of interesting and useful suggestions about how the act might be improved.

With regard to one of those speeches, one made by Mr. Breaugh, I want to echo a concern that he expressed, which was that the best chance for a conflict-of-interest bill working effectively in the Legislature is if we can approach consensus across the three parties about the form that bill should take. As a result, we are here, or I as a member of the executive council am here, to listen to the debate.

I have attempted to cull from the speeches a number of areas where opposition members expressed concern about the form of the bill and to prepare a very short discussion paper on each of those areas, with a number of possible amendments. That is the discussion paper which has now been circulated to you.

You will see that, on a number of the issues, amendments in draft are submitted which are inconsistent, and that is because I have no sense yet of the shape the debate will take in the committee. For example, on penalties you may want to go in one direction, strengthening the penalties; or you may want to go in another direction, loosening the penalties. Therefore, in the discussion paper, we have tried to canvass the issues that are presented and provide options that the committee may find useful in selecting the way it proposes to go at the clause-by-clause stage. So I put that before you in the hope that it will provide a useful foundation for your debate.

Having said that, let me say three things in a preliminary way before we turn to the text of the bill. The first is that the difficulty in drafting a bill on this subject is that the phrase "conflict of interest" is potentially so broad as to be almost without legal signification, and you are very quickly involved in the business of drawing lines about what you meant when you used the phrase "conflict of interest" and what you did not mean when you used that phrase.

In the most general sense, I presume a conflict of interest might be said to arise when a member or a cabinet minister acts entirely or in part motivated by a personal opinion or interest that he or she has above and beyond his specific duty. At one extreme, for example, a Minister of Culture and Communications who is an opera buff may approach funding questions for the opera-ballet house in the city of Toronto in a different way from another member of the executive council who is not interested in opera. That Minister of Culture and Communications will have allowed a personal opinion about the subject matter which he or she uniquely holds on the basis of his or her personal experience to affect his or her judgement.

In the same way, at the same extreme, a Minister of Community and Social Services whose father is unhappily afflicted with Alzheimer's disease may give to programs designed to deal with Alzheimer's patients a greater priority than somebody else would. His personal opinion or his personal family interest may in some measure motivate the way he approaches either legislation or the decision-making function of his portfolio.

At the other extreme, of course, are cases where a member of the Legislature or a minister votes on a precise piece of legislation or adopts a

precise piece of policy which may have the effect of increasing the value of his or her residential property or the value of some asset owned by the minister or the member.

So you can see--because I am sure some of you may have said, "Oh, well, the first cases we are not trying to deal with too much"--that we are already in the business of drawing lines about what we intend to include in the personal opinion or interest and the extent to which we are prepared to examine the motivation of somebody who either casts a vote in the Legislature or makes an executive decision, and you will be very much engaged, as I understand it, in deciding where those lines should be drawn for the purposes of this legislation.

The second thing to observe is that we have adopted, substantially in advance, the conclusions of the Parker commission which in a sense are a novel public utterance in our province. I am not saying other people have not said it, but I think the Parker commission is the first commission to opt for public disclosure as the prerequisite for the foundation of any legislation.

The guidelines that, from time to time, have been in place in this province and elsewhere have never amounted to full disclosure. The intent of this legislation is to achieve full disclosure, it being understood that when full disclosure is made plain, then at the end of the day it will be for the deciding mechanism, whether that be a commissioner, the Legislative Assembly or the public, to determine whether the interest disclosed has been the motive for a decision or vote in the Legislative Assembly.

The third thing to observe is that we make no attempt in this bill, for reasons I gave in the House, to deal with lobbyists--we are reviewing that matter separately in light of the federal proposals--or to deal with confidential staff and public servants, both of whom are governed either by the Public Service Act or the Crown Employees Collective Bargaining Act. It may very well be that amendments should be appropriately considered to those two pieces of legislation and I should tell you that the government has this very much in mind.

May I now turn to the bill. I would be delighted to have questions at any stage, if that is how you want to proceed. I think the easy way to deal with the bill is to divide it up into subject matter and deal with each of the subject matters in turn. This is not chronological because I think it is easier to do it in this case in a nonchronological way.

May I first take you to sections 9 and 10 of the bill?

Mr. Sterling: Before we enter into the bill, one of the questions I had in reading this bill in conjunction with the Legislative Assembly Act was that there did not seem to be any attempt by or any section in here which--like the way sections 10 and 11 of the Legislative Assembly Act do. I was wondering whether legislative counsel or the Attorney General have laid their minds to that particular area. Those are the sections that basically are, in quotes, the conflict sections for an MPP at the present time. There also is some resolution mechanism in there if a member finds himself in conflict.

Hon. Mr. Scott: Mr. Sterling, we looked at that bill and gave some thought to the question of whether certain provisions of that bill should be incorporated in this bill. At the end of the day, we concluded that there should be no change in the Legislative Assembly bill and that it would be possible and practicable to develop a conflict-of-interest bill that was separate from the Legislative Assembly bill.

The reason for that fundamentally was that the Legislative Assembly bill, while it has some mandates, basically speaks to the qualifications of a member of the assembly and the way in which a disqualification, disentitling the member to office, may exist, whereas this bill deals with an otherwise qualified member and the risks he or she may run by voting or participating in a decision. The link of course is that one of the possible penalties under the conflict-of-interest bill is in fact disqualification in the sense that the seat is vacated, but we did not believe that link was logically required so that the two bills should be run one into the other. That is a judgement call and I would be interested to hear the view of the committee in due course.

1140

Mr. Sterling: On that point, this very committee, of course, had a report to the previous parliament. I think one of the objects of that report, if I recall--and I hope my memory serves me correctly--was that there should be some consideration of those sections because there was a lot of discussion at the Fontaine inquiry about those sections.

It seems to me that when you are dealing with this particular matter, when you are talking about conflict, as section 10 does in certain parts of it, we should remedy that situation while we are dealing with this bill and not leave what I think are two different bills dealing with the same matter and different kinds of resolutions.

Mr. Breaugh: I want to pursue a bit the minister's comments about lobbyists. One of the concerns I have, and it particularly struck me in going through the Parker commission report, is that there are some weird traditions around. They are not quite as prevalent here but they are here, and we saw them in the two inquiries we had last summer.

I never really did understand this. I used to meet on a regular basis people who identified themselves as being part of a minister's staff, particularly of people from the federal Parliament. They never went to Ottawa, they never worked, as my staff works, with the member or with the minister but they identified themselves as an executive assistant to somebody. They stayed in private practice.

It seems to me in reading the Parker commission that was at the heart of much of the problem that was uncovered there. If ministers came from business, as Sinclair Stevens did, they regularly brought in staff people they knew from their business experience to work on the ministerial staff. In part, I guess I always thought if I ever got in that position and there was someone I had worked with over a lengthy period of time, it would seem fairly logical that he would be somebody I would want to work with me now and advise me.

But that is an integral part too of where the conflicts arose, that these were people who did not leave their businesses in any sense of the word at all. Some of them did not go to work in parliamentary offices; they stayed in the private sector. We found in our inquiries that was part of the problem we ran into as well, that people were advising ministers, were doing some work that could be described as part of the ministry's efforts, but they stayed in the private sector.

I am very interested in how we are going to approach this. It is separate legislation, I suppose, but I cannot envisage how you would pull this apart from the conflict of interest.

Hon. Mr. Scott: If I can make one observation based on the reading of the Parker report and not on any experience this committee had in an earlier session--I did not participate in that and do not know anything about it--there were two figures, for example, in the Parker commission who may give rise to the observation you have made. The first was the lady with the Boots bag--I have forgotten her name--Miss Walker.

If you read the Parker commission, you see that Miss Walker was a federal public servant. She came from the private sector and was hired by the minister from the private sector, and indeed from his office; but she was a public servant. As the Parker commission makes plain, her conduct would be governed by the appropriate public service regulations--I do not know what they are--that may exist in Ottawa.

The fact that the minister may have assigned duties to her inappropriately was a matter of comment, but she was a public servant and in Ontario would be governed by the public service rules. The fact that she was stationed in Toronto rather than in Ottawa was the minister's choice in that case.

The other example that may give you concern--and I am speaking simply from reading the conclusions of the Parker commission because I did not follow it in detail--is the case of Mr. Rowe, who was the president of a company that Mr. Stevens owned. There was some evidence, I believe, upon which the judge commented, that Mr. Rowe had contact with the minister from time to time in that case. Now, Mr. Rowe was never a public servant and was never, as I can gather, on the payroll of the government of Canada, nor indeed on the payroll of the minister qua minister. He was the president of a company the shares of which Mr. Stevens owned, and any impropriety that arose in that case was because the minister thought it appropriate to make contact with Mr. Rowe and discuss business matters with him.

Now, under our regime, confidential staff who are staff who are being paid salaries by the public, whether they be legislative assistants, executive assistants or policy advisers to either members or ministers, are covered by the requirements of the Public Service Act; they are public servants. The case can be made, and I think should be made, that the Public Service Act may require amendment; that the guidelines such as they exist for deputy ministers and so on may not be appropriate. All I propose is that it seems to me orderly that the guidelines for public servants should be considered all at one time and that no effort should be made to hive off one group or the other.

On the other hand, lobbyists are a distinct breed who are, I presume, either salaried or paid on a fee-for-service basis, or who indeed may not be paid at all and still be lobbyists. Discrete legislation dealing with lobbyists has been undertaken in the United States and is being considered in Ottawa, and the government has said that we will consider it here. The role of a lobbyist may affect a decision, certainly, but it does not seem to me that lobbyists necessarily have to be dealt with under this act.

Mr. Breaugh: Just to pursue it briefly, one of the problems I have is that in the two inquiries we have held here, we saw this array of people coming in: Some were full-time civil servants covered under that act; some were people who were in related ministries, really had nothing to do with that minister in a formal sense but advised him, clearly; some were people in the private sector who had, in theory, nothing to do with this place, but in practice that was the centre of the conflict allegation. Now, somehow we have to kind of sort this out.

I do not suggest for a minute that an amendment that I proposed here is the be-all and end-all. But when it comes right down to it, if we want in any sense to regulate the conflicts that may occur, we do need some kind of listing of who is functioning as a lobbyist, who is functioning as a civil servant, who is functioning as an adviser to the minister. Somewhere we need to be able to lay our hands on that or we will be for ever listening to allegations that they had undue influence because they lived on the same street as the Premier.

Hon. Mr. Scott: Mr. Breaugh, I think you can begin with the proposition that any crown employee is to be judged by the standards that apply to the public service. A confidential staff member is a public servant for that purpose, so that any confidential staff who are paid money out of the public Treasury for their duty, or any civil servant properly so called, has to be governed by the public service staff rules. Whether those rules require to be tightened or modified is a question that is worthy of debate.

You will know well--I do not say this critically--and I know well that members and ministers receive advice gratis, in the sense that the members or the ministers do not pay for it and the public Treasury does not pay for it, from a wide variety of people, including ratepayers' associations, organizations in our constituency and representatives of trade groups, trade unions, trade associations, drug manufacturers and so on. That group of people generically--whether they be a ratepayers' association in your neighbourhood seeking to get an amendment to the Planning Act or a drug manufactory trying to get a contract to provide drugs to hospitals--those people, generically, are lobbyists.

1150

I understand your point that there should be some statutory mechanism of dealing with lobbyists. Again, when we turn to that, we will have to deal with a number of issues. First of all, without the most draconian legislation, you cannot prevent a citizen, whether he is employed by a drug company or is a member of a ratepayers' association, from trying to contact an MPP. So the shape of the statute will obviously, as you say, have to deal with some kind of registration.

Who is to register? Well, presumably one natural cutoff is that people who are paid to do that may be registerable and persons who are not paid to do it are not registerable. The trouble with that is that then, I take it, the Canadian Manufacturers' Association people, if the president comes in, would not necessarily have to register as lobbyists because they would not be paid to do that; he is paid to be president of a trade union.

Those issues are important and difficult ones and have to be resolved. The legislation in the United States is an interesting example. What is being talked about in Ottawa is an interesting example. But, with the greatest respect, they are not necessarily a part of what we are now beginning to do here, which is to regulate how a member and how a cabinet minister will conduct himself with respect to his personal or private interests.

Mr. Breaugh: Let me just leave you with one further point that is vexing me. I do not have a solution to this one.

There is a growing industry in Canada of people who--they do not call themselves lobbyists here; they are consultants, they are a range of things. It used to be confined to one or two ministries where people would come in and

work in the ministry for a while, design great programs, wonderful laws and all of that kind of stuff, and the next time I meet them they are out in the private sector, usually with a government grant, doing that, the program they designed.

We now have the phenomenon of people who, for example, helped to design the rent control process in Ontario out advising various development firms on how to get around the rent control process in Ontario.

In Ottawa it is a big industry now to say: "I am a friend of the government. I can help your company get government grants or receive government approvals to do various things."

There is clearly somebody who would have been covered under this conflict bill while he was on a ministry staff, but the moment he leaves he is not. Certain levels--the ministers, for example--cannot quit today and go and set up shop tomorrow and continue to do business with the government. There is an attempt made to regulate that part of it.

I wonder if there is much in here that would in fact prevent someone in a senior ministerial position, who drafted all of the regulations having to do with whatever, from saying, "Now that I have drafted the regulations I can double my income by going outside and setting up a consulting firm advising the industry how to beat the regulations."

Hon. Mr. Scott: As you will know from looking at this legislation, we provide that a minister of the crown is prevented in effect from making representations for a contract for himself for a 12-month period. We have elected to impose no such restriction on a member, I believe, so that a member will have that right as soon as he is defeated or as soon as he resigns.

As I say, what should be done with a public servant, by which I include civil servants or confidential staff, is a matter which should be regulated under the Public Service Act. I am very sensitive to the suggestion you make and say that it may be appropriate that public servants and confidential staff should have some such leash imposed on them.

This act is not directed at that question, and I simply observe that your question is a good one which the Legislature may want to address by looking at the Public Service Act.

Mr. Sterling: Not dealing directly with lobbyists and the government or public servants--and we believe some of the public servants should be covered by conflict-of-interest legislation--but dealing with the other person who is in between, and whom the Attorney General has neglected to mention, is someone who we think should be restricted in terms of not only a disclosure but in terms of some kind of conflict provisions. I am talking about a parliamentary assistant, who is paid by the ministry and who perhaps has more access to decisions made by the ministry, yet there does not seem to be any special provision dealing with a parliamentary assistant. How do you fit him or her into the equation?

Hon. Mr. Scott: A parliamentary assistant, under this bill--I will be glad to have the comments of the various members on this--is treated as a member of the Legislature. He is obliged to make the same disclosure as any member of the Legislature makes. He is obliged, in making decisions, to make the same declaration with respect to conflict as any member or cabinet minister makes. The critical feature between a parliamentary assistant and a

cabinet minister in this proposed bill is that the injunctions imposed on a cabinet minister by section 7, that he or she shall not carry on another business and so on, are not imposed on a parliamentary assistant. I will be interested to hear whether you, as an experienced parliamentary assistant, believe that section 7 should be applied to parliamentary assistants.

Mr. Sterling: The other thing is, is there is any distinction, on conflict, between an ordinary member and a parliamentary assistant?

Hon. Mr. Scott: No.

Mr. Sterling: I guess my concern here is that a minister may delegate to a parliamentary assistant certain tasks that would normally fall within the ambit of a cabinet minister.

Hon. Mr. Scott: Perhaps I have not made myself clear. The act is founded on two principles. Cabinet minister or member, everybody will disclose so that the public will know what you hold. Then everybody is obliged to declare if they are in conflict under section 8 and withdraw. That applies, of course, to ministers of the crown in cabinet meetings and to ministers of the crown at their desks in their offices when they are participating in deciding what executive orders should be made. It applies to parliamentary assistants. It applies to members of the Legislature.

A member of the Legislature sitting in committee considering a bill that affects his personal interest, as defined by the bill, will have to do what section 8 contemplates; that is, he will have to declare a conflict and refuse to participate further or run the risks the legislation creates. Once you have the disclosure system in place, the duty on members, parliamentary assistants and ministers is exactly the same.

It may be said that the duty on a minister is more difficult because he spends his whole time making decisions, but I heard it said just the other day on the wage debate that the members now spend their full time, as I believe they do, participating in decision-making. It is not government decision-making, but it is legislative decision-making in precisely the same sense, putting forward amendments, rejecting other amendments, voting, counselling, trying to build a consensus for this position or that position. If this bill is passed, each of those groups--member, parliamentary assistant and minister--will have to reflect before he takes decisions on whether he is acting in a way that may be perceived as affecting his personal interest, except as accepted by the definition section.

By and large, apart from that the only restrictions under the bill are imposed on cabinet ministers. Cabinet ministers, under section 7, may not carry on other occupations. Cabinet ministers, when they leave office, may not do certain things. Whether the committee wants to impose similar obligations on ordinary members and parliamentary assistants is for it to say. If you believe, for example, that an ordinary member, who we now know is full-time, should not be able to carry on another business or occupation or manage his shareholdings or his real estate, you have only to say so and if there is a consensus the government will be happy to consider it; I do not say act on it, but consider it.

1200

If you believe that a member who is defeated should not be entitled to participate for 12 months, or some other such period, in approaching

government on behalf of others, you have only to say so and we can deal with that. But we have tried to treat private members of government or opposition as different in those two senses alone from cabinet ministers.

If you are going to the bill, Mr. Chairman, I think the easiest place to begin is section 9. I will draw in the definitions at such stages as we need them. This establishes a new office, the office of commissioner. You will note it is an office of the assembly. The appointment of the commissioner is on address of the assembly. In that sense, the commissioner is in the same position, for example, as the freedom of information commissioner and, I believe, in the same position as the Ombudsman.

His term of office is provided. The conditions for his removal are set out. The way he is paid is established in subsection 5. His right to retain staff is governed in section 6, and the necessity of making an annual report is spelled out in section 10.

Let me say one word here about this commissioner. He is vested with as much independence, I believe, as a bill is able to give to an officer of the assembly in terms of his decision-making.

The purpose for having a commissioner responds to a practical difficulty. At the present moment, an allegation of conflict is properly regarded by members as the most profound and serious allegation which can be made against a member of the assembly, that he has voted on an occasion of conflict without declaring his conflict, or that as a minister he has acted on an occasion of conflict without declaring his conflict and removing himself.

For a member or a cabinet minister, that allegation is absolutely central to the way he performs his duty and fundamental to his self-respect because the allegation itself suggests that the member has put his private interest before the public duty which his electors selected him to do. It is a capital sin, it seems to me, if made out, of an elected member, that he has put his own personal interest ahead of the interest of those who elected him.

That is not to say, and I do not believe, that every member should necessarily respond to the views of his electors on a case-by-case basis, but I think all of us, including Edmund Burke, agree that it would be wrong for an elector to put a personal interest, not a personal opinion necessarily, but a personal interest ahead of the views of his electors, so that when we come in Ottawa to issue capital punishment we all recognize that no member is bound or, indeed, should be bound to vote for capital punishment or against it simply because a poll, no matter how accurate of his electors, describes how they would vote in his place; but we also agree that no member should be allowed to vote for capital punishment because he is the major shareholder in a rope-producing company which seeks to benefit from that public initiative.

Mr. Breaugh: Truly a twisted mind at work here.

Hon. Mr. Scott: A twisted mind at work. We have sought to invest the commissioner with these broad powers as a member of the assembly because there is no allegation that cuts more fundamentally at the self-respect and duty of an elected representative.

Under the present regime, if an allegation of conflict is made inside the Legislature, there are basically only two things that can be done by a member to defend himself.

The first thing is he can assert that his privileges have been affected by the allegation, and a committee of the Legislature or the Legislature as a whole will take up his cause to determine whether the allegation is made out. We have two recent examples of that.

The second thing he can do is persuade the executive council, if he can, to appoint a judge under the Public Inquiries Act to do the same thing.

All of us recognize, and I think particularly and most fairly the members of the Legislature who sat on the last two committees, that those methods are not satisfactory and are not fit to the purpose which should be a part, if we want, to allow a member to respond to an allegation, and if we want to get a finding that is fair and justifiable on that allegation.

The first is not fit because we are either going to have minority parliaments or majority parliaments. If committees of the assembly are going to hear these allegations there is a risk, happily not one we had to worry about too much in the last session, that a minority parliament will become overly politicized when it responds to its judicial function of deciding whether the allegation is made out.

If there are minority parliaments looking into allegations of conflict against individual members, some people will always say, "Politics dictated the result." If there are majority parliaments looking into allegations of conflict, someone will always say, "Whitewash dictated the result." So I am suggesting to you that at the end of the day, confronted by this serious allegation, the assembly and its committees are not an effective method of determining the judicial question, which is whether a conflict exists.

I do not believe the second remedy, a public inquiry, is desirable either, for two reasons. First, a public inquiry is enormously expensive. You just have to look at the Parker commission report to determine how expensive it is. It thus follows that it is not every allegation, no matter how serious, that will persuade a government of the day, and it is the government of the day that is going to act, that a royal commission should be established. The most heinous allegation made against the Leader of the Opposition, if we heard it was going to cost \$1.5 million to inquire into it, might not lead to the appointment of a royal commission.

The second thing is that royal commissions take so long to do their work that, in substance, a member is neutralized, to use a neutral expression, during the commission's incumbency until a decision is made.

So we have opted to create a mechanism, reporting to the assembly itself, which will be the judge of conflict cases and conflict allegations when they are made. That is why the office of the commissioner is a central one.

If I could take you to the second stage, sections 11 and 12 of the bill, this relates to the members' obligation to disclose. You will see that it is a two-stage process.

The first stage is that "every member shall within 60 days of being elected, and thereafter annually, file with the commissioner a disclosure statement" on a form to be provided. I want to emphasize here that this disclosure statement is made by the member privately--that is to say, the disclosure statement itself is not public at this stage--to the commissioner. "The disclosure statement," on a form to be provided, "shall contain a

statement of the assets, liabilities and financial interests of the member and the member's spouse and minor children."

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Stopping there, I ask you to observe that there is no restriction whatever or no qualification on the assets, liabilities and financial interests that have to be disclosed. Every single asset, liability and financial interest has to be disclosed. No more will we have to examine, as one did under the Davis guidelines, whether this duplex in which you lived was a residential property or not or whether this property, which has no building on it, was in fact a vacation property because you camped on it from time to time in the summer or not. Everything that you own and every debt that you have is disclosed.

The disclosure statement goes on to include for disclosure things other than assets, liabilities and financial interests. It requires "a statement of any income the member and the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them, have received in the preceding 12 months or are entitled to receive in the next 12 months and the source of the income."

So you and your spouse, to meet the requirements of this section, must sit down and list any income, \$10, \$100, \$1,000, that you or your spouse or minor children have received in the last 12 months from any source whatever and the income you anticipate receiving in the next 12 months. You must list not only the income but also its source.

Then, to expand the disclosure requirement if necessary, in the view of the commissioner, clause (c) asks for "any other information that is prescribed by the regulations." That is put in there because we think we have it all in clauses (a) and (b), but because disclosure is so critical, we want to be sure there is a capacity to add on to the information that shall be required.

Following the making of that statement by the member to the commissioner--I will come to the definitions in a moment, but stopping just here--the member makes that disclosure on the form on his own behalf, on behalf of his spouse and on behalf of his minor children.

Following that, the member and the member's spouse, if the spouse is available--because matrimonial disputes may occur and the spouse may not go--must meet with the commissioner so that the commissioner can assure himself that adequate disclosure has been made and to obtain advice on obligations under the act.

In that meeting, within 60 days of your election, you make the disclosure statement. You then attend with your spouse before the commissioner and he assures himself, in so far as he can, that everything is there and tells you what your obligations are as a member under the statute; how you are to declare your interest and in what circumstances and your obligations having declared the interest.

Then there is a provision for affiliated corporations, which I draw to your attention, because it will be the commissioner's function to find out if shares, for example, or holdings in any named corporation also invoke affiliated corporations that you may not even know about. If I owned 100 shares in International Nickel, Inco probably has 100 affiliated corporations that I have never even heard about.

So that I will know what the limits of my rights are, the commissioner gets me that information: "Look, Scott, you think you just own shares in Inco. I am telling you, because of the affiliation corporation rule, that you own shares in the following 100 other companies you never even heard about. Watch out for them."

Then, under section 12, after meeting with the member and with the member's spouse, if the spouse is available, "the commissioner shall prepare a public disclosure statement containing all relevant information provided by the member and the spouse...in respect of the member, the spouse and minor children, except"--and we have here a series of things that the commissioner will know about, but which he is not obliged to set out in the statement he makes to the Clerk of the House: assets of a value of less than \$1,000; the source of income where the income paid from a source has a value of less than \$1,000 in any 12-month period; and so on. You will be going through those in clause-by-clause.

The theory here, if I may put it this way, is that the commissioner should not be obliged to disclose an asset publicly if it is a relatively trivial asset or if it is an asset the growth of which is not likely to be affected by public policy-making. For example, you have to disclose that you have Canada Savings Bonds, but the commissioner is not obliged to disclose the amount; you are obliged to disclose that you have pension rights in a certain pension plan, but you are not obliged to disclose the value of those pension rights; and so on.

Now, I should stop here to say that one of the things Mr. Aird--and he will be here this afternoon--did not disclose in his public statements is the value of certain assets that are not superficially exempted from public disclosure under section 12, and you may want to ask him why he made that judgement. Indeed, he has told us, because he wrote a letter to the Clerk saying why.

For example, one of the things that is exempt from disclosure is the municipal address or legal description of residential property, so in my case he has disclosed that I own residential property and he is permitted to exempt the address. It does not say anywhere in these exemptions that he can exempt the value of it. He has, in fact, failed to disclose the value of it, and the reason he has given to the Clerk for doing that is that he refers back to subsection 12(1) and has judged that in the public disclosure statement, which must contain all relevant information provided by the member, the value of that residential property is not, in his opinion, relevant.

So I have told him where I live and the value of the property in which I live. He is not obliged under clause 12(1)(d) to disclose the address--indeed, he is obliged not to disclose the address of that property--and he has judged himself that to disclose the value of that property is not relevant.

Mr. Chairman: That is very helpful.

Hon. Mr. Scott: The next, unless the committee has any questions--

Mr. Breagh: Yes. Let me just stop you here. Just a comment on the disclosures as they have been done, fantasizing that there is a law in this regard.

It seems to me that somehow we missed the boat here. I am reminded of other jurisdictions where the member said, "The conflict-of-interest law that

we have is all about filing pieces of paper that give no one any valid information." It does strike me that, on the first run, we have succumbed to that quite a bit.

I am having difficulty--because I do not disagree with what Mr. Aird had to say in his letter to the committee and I do not particularly disagree with your approach to it, either--but it does seem to me that there is a tremendous number of pieces of paper with noninformation floating around here, and it seems to me to be a useless exercise.

Now, I do not think we have made a judgement call very accurately about what is relevant where a conflict is likely to arise and what the public really should know. I suppose maybe we are getting to what I have heard people in other jurisdictions really say: that once you start this process, it is all publicly disclosed, every single whit of it, and the public decides what is relevant and what is not. Maybe that is where we are headed.

But just as a passing comment, I took the time to go through the public declarations made by the cabinet here, and it really does strike me that it does not really tell you a heck of a lot.

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Hon. Mr. Scott: Perhaps I can give an example. Let us assume you had a member who was about to enter the cabinet and who owned International Nickel shares, and let us assume that the Premier is going to appoint him Minister of the Environment, a position where you might judge that those holding were in some fashion inappropriate. The member is obliged to tell the commissioner that he owns those International Nickel shares and to tell him the number of shares he owns and their value. The value is easy because he can just get it out of the Globe and Mail, but he has to tell the value and he has to give him a value even if they are private shares.

Under this statute, the commissioner then makes his report to the Clerk. He tells the Clerk in a public way that this member owns International Nickel shares. This may be a question you want to ask Mr. Aird about. He tells you the number, 125 International Nickel shares, but he does not tell you the value. You do not need to know the value in that case because you can look it up, but you may say, "Why did you not put a value on these goods?" He will tell you that it was his reading of the bill that "relevant" allowed him to make that judgement, and you can either accept that or call for an amendment of the bill that will deal with that point.

But at the end of the day, under the Davis guidelines, the first Peterson guidelines or under the federal plan, you never even got to know that the member owned International Nickel shares because they were put in a blind trust on the one hand or they were kept in petto, as cardinals say, in the Premier's heart, and were never disclosed. It was only when you did some digging on your own that you found that out and raised hell: "Why is the Minister of the Environment carrying on his duties when he owns International Nickel shares?" Now, you will have that disclosure.

In a sense, it is a piece of paper flying out to the public, but in my view it is a critical piece of paper that we never had before, that tells people something they are entitled to know about the assets of members and ministers.

Mr. Breaugh: Let me just stop you for a minute and then I will leave you alone. I am trying my best to resist going from the documents that were filed and publicly disclosed on specific ministers--

Hon. Mr. Scott: The fact that we did not see the whole of them should not come as any surprise on your part.

Mr. Breaugh: We seem to have succumbed to the old stunt that if you give people 14 pounds of paper containing a whole lot of noninformation, you will have snowed them under and they will never ask any relevant questions. We seem to have done an admirable job of that.

But second and more important, we have not got the relevant information. For example, it still seems to me to be quite possible to be a Minister of Mines and to get all kinds of mining grants and set the regulations under which mining occurs and function in that regard.

Hon. Mr. Scott: No.

Mr. Breaugh: It still seems to be to be very possible to be a Minister of Labour, to own a whole lot of construction firms that operate under the labour laws of Ontario, and it is business as usual. It still seems to me to be related to someone who owns a major construction company that builds a whole lot of government projects.

Hon. Mr. Scott: I will respond to that. First of all, before we approach a cabinet minister with the analogy, let us take a member. A member comes to office and let us say he owns a construction company and some mining companies. We will leave his spouse out of it for the purpose of simplicity. For the first time, and it does not matter through what mechanisms he holds those shares, he will be obliged to disclose them and those holdings will become for that member a matter of public record. They will know that the member for Oshawa (Mr. Breaugh) owns a construction company in Oshawa or that the member for Etobicoke-Rexdale (Mr. Philip) owns some condominiums in Etobicoke.

If it should happen that there is a vote in the Legislature which affects the regulation of construction companies or the regulation of condominiums, in light of the disclosure statement the public or members will have some inquiry if the members involved do not make a declaration and say they are not voting, but there will be nothing to say that you cannot sit as a member as long as you hold those things. You will not be required to divest to become a member. You will be expected, having become a member holding those assets, to simply declare them publicly and resist decision-making that touches on those assets.

When you come to the cabinet, you have, as a third example, a person who is going to be a minister who has publicly disclosed that he owns a construction company and a mining company and gets grants in respect of mining, let us say. That will all be publicly known, because his income and the income of his companies from grants has got to be declared under this statute.

The Premier decides whether he should be a minister. The first thing in the Premier's mind is going to be, "How many declarations is this person going to have to make?" If a man owns a dozen mining companies, big or small, obviously there are not many decisions--he is not going to be a very lively Mines minister because he will have to be declaring his conflict every single day and taking no decision in the Ministry of Mines. So, presumably, the Premier does not make him the Minister of Mines. If he does, the first time he acts there is going to be an allegation of conflict, which the commissioner will then determine. The commissioner will probably say, "Look, you cannot make that executive decision about mines because you own mining companies."

In the same way, if you own a construction company, that will be a matter of public knowledge. It would be very difficult, probably impossible in the result, for the Premier to make you the Minister of Government Services, because every day you would have to be going to the commissioner and saying: "I cannot act. Give me an opinion." I do not know if that helps.

Mr. Breaugh: Let me give you one example that does not cause me to cast aspersions on other members. I could, as an ordinary member, go to General Motors of Canada and say: "How would you like to have a representative of General Motors right in the Ontario Legislature? You tell me what questions you want asked and what positions you want put. That'll be my job. You pay me a retainer of \$100,000 a year, and I'll be happy to do that." I could do that under this.

Hon. Mr. Scott: You would have to declare it.

Mr. Breaugh: I would have to declare it, but I could do it. I could function as their lobbyist in Queen's Park every day. Or I could go to the Canadian Auto Workers and my friend Bob White would say, "We can't afford to put somebody full time on this, but we'll give you 10 grand to go down there and voice the position of the Canadian Auto Workers every day."

That is my problem here. The more I get at the nature of trying to make a distinction between someone who is in the cabinet or someone who is a parliamentary assistant or some other member, I am having trouble with these little distinctions; and I am really driven back to the same position that the same rules have to apply to everybody.

You could think of a number of other conflicts that could occur where a member--I have listened to Mario Cuomo do his routine in New York state and he was saying, "I say to myself and to my staff that you cannot have an outside job and that removes all the conflicts, that you cannot work for the government and advise the private sector at the same time."

It does seem to me that we are going to get pushed in that corner sooner or later. You can do it in stages or in steps if you want but, sooner or later, you will come to the opinion that you cannot legislate and work in the private sector at the same time. Even for somebody like me, who is probably not going to get in the cabinet this year--unless I hear a good argument--the conflicts will be there.

Hon. Mr. Scott: To hear you performing so far doesn't lead me to that conclusion.

Mr. Breaugh: Yes, I know.

You have to set the one standard, and it has to be something which is fair for everybody and clear. It seems to me that we are missing the boat here a little. I do not know whether you want to get to the point where you say, "When you enter politics, whether you get into the cabinet or not, there are certain things you have to get rid of."

Hon. Mr. Scott: The first thing, Mr. Breaugh, is that if you got \$10,000 from General Motors or the Canadian Auto Workers to advance their views in the Legislature, under this act you would have to publicly declare that source of income and its amount.

The second thing is that if you attempted to promote the views for which you had taken a fee, you would in breach of the Legislative Assembly Act, because section 40 of that act says you cannot do that.

The third thing is that, even if that were not the case, if you failed to declare and voted on something that interested General Motors or the Canadian Auto Workers, an allegation would then be made against you by a member, and the commissioner might well rule that you were in conflict and would have to vacate your seat, or he might reprimand you.

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Mr. Breaugh: None of this would ever happen.

Hon. Mr. Scott: It might.

Mr. Breaugh: It never has.

Hon. Mr. Scott: You see, the reason it has not until now--this is very important--is nobody knew that you were receiving \$10,000 from General Motors--in this mythical case, clearly not you. Of course, everybody would say that you do not have to tell the commissioner. If we begin with the proposition that newly elected members are going to lie about their assets, we have a major problem. But now the public will know something about your income that it did not know before, and it may be that this will drive us, inevitably--and should drive us--to the proposition that no individual members should be allowed to carry on other businesses. I understand that. The sense is that, with the present remuneration, that would be unreasonable at the present time.

Mr. Philip: While we are on section 12, I wonder if the Attorney General can give me an explanation of and the rationale behind subsection 12(2).

Hon. Mr. Scott: Frankly, one of the problems here is what to do if your income or the income of your spouse is from, let us say, the practice of medicine or the practice of law, because this applies to any member, but the exception applies only to a spouse.

Let us take the example of a member whose spouse is a practising lawyer in the firm of Gowling and Henderson, where I came from. That firm has 150 partners at five or six locations, and the income that spouse gets is a proportion of the fees of the firm. You would not be interested in hearing that the income of the spouse came from the firm; everybody knows that. You might say, "I want to know all the names of the clients of the firm." In the case of Gowling and Henderson, that would be somewhere between 80,000 and 100,000 separate clients, many of whom might not want outsiders to know that they had retained lawyers.

If your spouse is a doctor treating certain kinds of diseases, let us say, it is judged that it would not be appropriate in declaring the spouse's income to require him or her to list each of the patients of his medical practice. That is what the exception is designed for.

Mr. Philip: I guess the question then arises, how do you make a distinction? Say you or your spouse is a management consultant and instead of having, as a doctor might have, 300 clients or 3,000 clients--I do not know how many clients a doctor may have--you have three clients. Does that make a difference?

Hon. Mr. Scott: In my judgement subsection 2 would not apply because management consultants are not treated by the law as undertaking

confidentiality with respect to their clients. The right of confidentiality with respect to retainer as a matter of law, as far as I know, applies only to doctors and lawyers, because there are implications for citizens if it becomes publicly known that they have sought legal advice or medical advice. There is a public interest in encouraging them to do so, and the law tradeoff is you allow them to do so on a confidential basis. A management consultant's clients would have to be listed.

Mr. Philip: If he were doing personnel consulting, he might well be in the same ethical position as a doctor, but supposing in the case of your lawyer, he really has only three clients, which is a possibility; he may be acting on a consulting basis on a retainer for one or two or three companies.

Hon. Mr. Scott: It makes no difference.

Mr. Philip: Does that make a difference, as compared to their being employed by a--

Hon. Mr. Scott: Well, I have never met a member or spouse in either the legal profession or the medical profession who has been able to survive with three clients or patients, but it does not make any difference.

Mr. Philip: A doctor could be on a retainer from two or three insurance companies. For example, I might be using--

Hon. Mr. Scott: Yes.

Mr. Philip: It might be his whole, sole occupation.

Hon. Mr. Scott: Yes, and that spouse--the spouse is the doctor--would have to disclose to the commissioner a source of the income; that is to say, the three insurance companies' names. But the commissioner would not be obliged to disclose that to the Clerk.

The tradeoff here, very frankly, is a difficult one. Increasingly, we have members whose spouses work. It is perceived to be entirely in the public interest that two-income families should be acknowledged and indeed encouraged. In so far as women are entering the market in large numbers, we want to encourage them to build careers and take on jobs, and the line we have selected is one that requires disclosure but does not impede the right of a spouse to carry on a normal economic life.

One of the very real risks here is that by imposing limitations on the member we will impose limitations on a spouse, and that surely is not our intention, provided there is disclosure. Subsection 2 really is focused on preventing disclosure, which is almost impossibly difficult in some cases.

The commissioner, though, will know the answers to those questions.

Mr. Chairman: I am just wondering what course of action we can follow. I originally anticipated that we might be able to complete this this morning. We have Mr. Aird at 3 p.m. The Attorney General has some other things too.

Hon. Mr. Scott: We could carry on to about 1 p.m., if that is not too much.

Mr. Chairman: I do not mind. I am just trying to--we have some other questions. Do you want to carry on till one o'clock? Then when do you want to come back, or can we finish this by one o'clock? That is the other question.

Interjection.

Hon. Mr. Scott: I can come back. You have Mr. Aird coming, I think.

Mr. Chairman: We have Mr. Aird coming this afternoon.

The other thing we could do is to have Mr. Scott come tomorrow morning at 10. We have another appointment tomorrow. Mr. Bryden would like to come before the committee tomorrow morning, but we could maybe schedule Mr. Bryden for 11, as they both, I am sure, would not take the same length of time. We could have Mr. Scott till 1 p.m. today and have him come back tomorrow at 10 until maybe 11. Then we could finish up tomorrow. Would that be satisfactory with everyone?

So let us go until one o'clock today and have Mr. Aird at three, and then have Mr. Scott tomorrow at 10 a.m.

Hon. Mr. Scott: Because I think it will help you with Mr. Aird, I will try to get through as much of the rest as I can.

The third major section I call "offences"--

Mr. Chairman: Mr. Scott, I have two other questioners, Mr. Polisinelli and Mrs. Sullivan.

Mr. Scott: Yes, I am sorry.

Mr. Polsinelli: My questions really stem from questions that have been asked by Mr. Breaugh and Mr. Philip. Starting first with your interpretation of subsection 12(2), where you indicated that the commissioner may except from disclosure the source of income for a spouse who happens to be a partner with Gowling and Henderson so that she would not have to disclose the 80,000 to 100,000 or so clients, what if, in that situation, the member were a partner in the firm of Gowling and Henderson and maintained a part-time law practice or at least his membership interest in that firm? Would a member have to disclose, if requested, the 80,000 or 100,000 or so clients that the firm has?

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Hon. Mr. Scott: My reading of the legislation is that because law firms and medical practices cannot incorporate, he or she would.

Mr. Polsinelli: Mr. Chairman, then I ask that this be an item subjected to further consideration. I think that--

Hon. Mr. Scott: I am certainly prepared to consider it, but let me say that I think we now approach a critical stage because we are not talking about a spouse any more. We are talking about a private member who continues to carry on the practice of law or medicine, or indeed the practice of consulting or anything else. The thrust of this bill is that the private member is going to vote, is going to move resolutions and is going to make decisions as a legislative member, and that this case falls on the other side of the line. We should know if part of his income comes from three insurance companies. We should know if part of his income comes from businesses of various types.

Now I recognize that there is going to be an onerous obligation if a sitting member retains a membership in a law firm that has a large number of

clients. Frankly, at the moment, and I am anxious to hear the committee's view, I do not know how to cut that down, but it seems to me you should treat the member and the spouse differently. That is really all subsection 2 is designed to do.

Mr. Polsinelli: Perhaps what we can do is delay the debate on that issue till we go to clause-by-clause debate, but at this point I would at least like to indicate my concern with respect to your interpretation of the section. First, statutorily I think it deprives the client of the lawyer-member his common law right to confidentiality. That is something I am very concerned about. Second, in a certain sense, it is almost saying to the lawyer who runs for office that his must be a full-time occupation, whereas you are not saying the same thing to any other professional who runs for office.

Hon. Mr. Scott: No, we are saying--

Mr. Polsinelli: If the government is prepared to move in that direction, then there are other considerations.

Hon. Mr. Scott: At clause-by-clause it should be debated, but what we are saying is that a member has to disclose the source of his income. If his income comes from 100 clients rather than from one employer, there is no difference in principle in those two things. The members of the public are entitled to know that when he goes home at the end of a session, he is getting money from a client, whether he is a consultant or a lawyer, right in his pocket. There may be mechanisms of dealing with it, and on clause-by-clause I will be interested to hear them. The individual member who goes home and then is retained by--if the executives of Inco read this, they will forgive me for using them so persistently as an example but none other comes to mind at the moment.

Mr. Chairman: They may appreciate the advertising.

Hon. Mr. Scott: When the member goes home and is retained by Inco and then comes back to the next session and votes on an environmental proposal, I think the public and our colleagues should know that he has so voted. His solution, of course, is to declare a conflict and not vote under this legislation. He is not prevented from earning that income but we should know that is the piper.

Mr. Polsinelli: As I say again, we can continue that conversation in clause-by-clause debate--

Mr. Chairman: Yes, I do not want to get into--

Mr. Polsinelli: --but I would also be interested in Mr. Aird's position on or interpretation of that particular section.

The other question I have relates to Mr. Breaugh's questions. When you are dealing with a member who has a controlling interest in a private company, as I read the legislation, the private company has to disclose or has to at least file a statement of income with respect to its earnings within the past 12 months and its anticipated earnings within the next 12 months, but where does it indicate that the private company has to disclose that it has received a government contract or that the private company has received a government grant? Could that type of item still be maintained confidential by the private company? If so, is that really not one of Mr. Breaugh's concerns?

Hon. Mr. Scott: It may be and that should certainly be examined. There is no requirement at present of a member who may own shares in a company to list the grants that company may get from some level of government. I think it is presumed that the nature of the company and the business in which it is engaged will certainly alert the public and the member. If it is a mining company, it is going to be looking for mining grants, but a person who owned 100 mining company shares would not be able to tell you and would not have the resource to tell you what grants that mining company had received over the past 10 years. Therefore, if a private member owned mining company shares, he would simply not have the capacity to answer the question in the way you seek to do.

There may be a mechanism that can achieve that. I am not trying to fight off these suggestions. I am simply trying to describe how the bill was drafted and the considerations we have in mind. If you have better ones in clause-by-clause discussion, we certainly want the advantage of them.

Mr. Polsinelli: No. My concern and Mr. Breaugh's concern, I am sure, was not the member who owns 100 shares in a publicly traded company. Clause 11(2)(b) deals with a private company where the member has a controlling interest. In that section, the member has to disclose the income of that private company and in relation to that private company that the member has the controlling interest of. Should there not also be an obligation for the private company to disclose any government dealings? I think that is the question.

Hon. Mr. Scott: I understand the point and it should be dealt with in clause-by-clause. What you are saying is that a private member who controls--

Mr. Polsinelli: I am following your legislation.

Hon. Mr. Scott: What section are you referring to?

Mr. Polsinelli: Clause 11(2)(b). As I read that legislation, it reads, "a statement of any income the member and the member's spouse and minor children" in private companies has to be filed.

Hon. Mr. Scott: That is correct. I think that is true, but you will see that relates only to private companies.

Mr. Polsinelli: That is all I am dealing with.

Hon. Mr. Scott: Yes. It does not deal with public companies controlled by the member.

Mr. Polsinelli: Right.

Mrs. Sullivan: I expect this is something you may want to pursue in clause-by-clause as well, or perhaps later on today with Mr. Aird. Relating once again to clause 11(2)(b), sources of income from private companies being disclosed, was there consideration given to the effect on the competitive situation of those companies in terms of dealing with that bill? Presumably, this means that if there was a manufacturing company that was a private company, that manufacturing company would have to disclose the names of each of its clients or other companies that have purchased goods or equipment from that company.

Hon. Mr. Scott: Yes.

Mrs. Sullivan: I am just wondering whether there was consideration given to maintaining some of that information in a confidential situation if it might affect the competitive aspect of the business.

Hon. Mr. Scott: We erred, if you want, in favour of disclosure in that case in drafting the bill, but the amount of the income of the spouse will not be obliged to be disclosed by the commissioner to the Clerk.

If you asked people what they wanted in a conflict-of-interest act, what they wanted out and what they did not want out, they would say, "We want all the big stuff but none of the little stuff." The reality is that is not a very good guide for legislative drafting because the lines are very vague. When you try to decide what is big or important and what is small and unimportant, what appears small at first glance may turn out to be absolutely critical.

Therefore, the scheme of the bill was to go a very substantial distance in requiring disclosure, indeed, to go the total distance in terms of disclosing matters to the commissioner, to allow him the right to reserve a certain amount of information, primarily related to the spouse and minor children, but certain other information as well, from the general public.

You may think that goes too far and I understand your point. There will always be lines we have to draw that will not achieve unanimity. I will be interested in hearing the committee's views on that during clause-by-clause.

1250

Mrs. Sullivan: I guess another observation. First, the competitive situation for members who own companies is one of the things that maybe we should talk about a bit more. But the other aspect is the depth of the information required. I am not speaking about spousal information, but from the member. Would actual sales have to be disclosed? Is that the nature?

I agree with Claudio Polsinelli, who is concerned that while the private company perhaps has to disclose sales, it does not have to disclose government grants or other moneys coming from government. That is one of the things I think should be added into this section, oddly enough.

One of the other assumptions here is that all private companies are small--

Hon. Mr. Scott: No. A statement of income of a private company will be disclosed if the source of the income is a government grant. What we have tried to do, and it is very difficult to do, I concede, and you will see the problems--you obviously do--is to maximize disclosure. We are conscious that disclosure has a downside, particularly for the spouse who wants to carry on a normal business life. It may damage competitive position. It may do a number of things. We have tried to approach that problem by a very discreet number of exemptions from public disclosure, even though the commissioner will know. We may not have drawn the line in the right place and I understand your concern.

Mrs. Sullivan: The other observation is that it seems to me the bill assumes that all private companies are small and all public companies are large. It may be something we want to look at, as well.

Hon. Mr. Scott: Yes. I think you will be interested to hear Mr. Aird this afternoon, because a number of these difficulties which jump off the page

at you will, of course, have been precisely considered by him. He will now have received the disclosure statements from 95 members of the Legislature and will get a pretty good sense of the range of problems. He has only made public disclosure for cabinet ministers and parliamentary assistants, but he will have a sense of the range of problems that are there, and so to a certain extent you will have the advantage of hearing from someone who has begun to work with the bill and can tell you something of its problems as he sees them; and that will be useful. He, no doubt, may have something to say about that.

The next sections I propose to deal with are what I call offences, and these are sections 2, 3, 4 and 5. Let me deal with sections 3, 4 and 5 first.

Section 3 is insider information. It is an offence for a member to "use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest." If he does that, the commissioner can declare his seat vacant.

"4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interests." Again, a complaint that that has occurred can lead to the vacating of the office.

Section 5 is gifts. I will come back to that. It is an offence to accept certain gifts, and the receipt of certain other gifts is a matter of declaration.

Let me return to section 2, because you will note that section 2, which defines conflict, is not defined as an offence. It does not say a member shall not. You may ask why. The reason for that is it is not regarded by most people as an offence to be in a conflict-of-interest position. It is an offence only to act by deciding or voting in that position.

For example, a member whose wife is a teacher--the courts have held this, I believe--is in a conflict-of-interest position when it comes to voting on the teachers' superannuation fund or some such amendment, but it is not an offence to be married to a teacher when the benefit for the teacher is a benefit under the superannuation fund, the way it is an offence to use insider information. The commissioner will merely declare that in that space or position, if you have not declared your position publicly and refused to participate, then you may have to vacate your office.

I want you to understand that for a member to have assets--because all members have assets, even the poorest of them, whether they be assets in a bank account or a pension or a house--it is not an offence to be in that position; it is an offence to act or decide without declaring them.

For example, everybody can imagine that if you owned no asset but your home, you could still be prevented, by virtue of conflict of interest, from voting on a bill. For example, if you rented your home, if a rental home was the only asset you had and it was owned, let us say, by a church, an amendment exempting that church's property from taxation might very well be a situation in which you found yourself in a conflict of interest. It is not an offence to rent that house; it is simply an offence to fail to declare and remove yourself from the decision-making capacity.

The four offences have been described in sections 2, 3, 4 and 5. I will leave the question of gifts for you to consider yourselves.

The next sections are 6, 7 and 8, and these sections are important. Let us take sections 6 and 7 alone first. These two sections deal with special obligations that are imposed on cabinet ministers and not, by they way, on parliamentary assistants.

Section 6(1): "The executive council, a member of the executive council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

"(a) award or approve a contract with, or grant a benefit to, a former member of the executive council, until 12 months have expired after the date when the former member ceased to hold office."

There are two further examples down. The effect of this, as you will see, is to make it a breach of the act--which the commissioner may find and declare the appropriate seats vacant--in effect to let a contract or a benefit to a former member of the executive council until 12 months have elapsed from the time when he ceased to hold office.

Section 7 is for cabinet ministers, the key section in the act, because it provides, apart from disclosure, special controls on the activity of a cabinet minister.

"7(1) A member of the executive council shall not,

"(a) engage in employment or in the practice of a profession;

"(b) carry on a business, including the management of personal financial interests; or

"(c) hold an office or directorship other than in a social club, religious organization or political party,

"except as required or permitted by the responsibilities of being a member of the executive council."

The last rider is designed to deal with ministers like the Minister of Industry, Trade and Technology who are by statute required to be officers of various enterprises in order to carry forward their duties.

1300

The thrust of this section is twofold. First of all, it is designed as a practical matter to ensure what must inevitably be the case, that a member of cabinet will have no other business responsibilities, apart from serving the public as a member of cabinet. In the second place, it is designed to reduce to manageable proportions the number of conflicts he may have.

For example, if I, as a member of cabinet, was entitled to carry on my practice of law, two observations might be made. One: "You are not delivering your whole care and attention to being a cabinet minister. You should get out of your private business." Fair enough.

More important, you might say: "Look, Scott, you are a partner in Gowling and Henderson. It has 150,000 clients. Even if you knew who those clients were from day to day and if you sought to honour your obligations under this act, you would be paralysed. You would be always declaring that you had a potential conflict and refusing to participate."

For cabinet ministers, the act says that you cannot do any of those things. There will be those who will say: "As a cabinet minister, you are prohibited from carrying on business and doing these things. You should also be prohibited from owning certain things," and that we have not done. We have not attempted to make a catalogue of things that cabinet ministers should not own.

Our solution for that is twofold. One is that the cabinet minister must disclose what he owns, and it will be for the Premier to decide whether, bearing in mind what he owns, he should be permitted to enter the cabinet. If the Premier makes a mistake in his cabinet choice of that person, there may quickly and promptly be a complaint before the commissioner which will declare the seat vacant.

For example, if the man discloses that he has mining shares, you might say: "Nobody should be allowed in the cabinet who owns anything. Get rid of your mining shares." We know that putting them in a blind trust does not work any more, so we say, "No, you have to disclose publicly that you own these." If the Premier decides to make you Minister of Mines, the first time you make a mining decision that directly or indirectly, within the definition, affects one of those companies or that interest, you will have a complaint before the commissioner.

Obviously, the Premier is not going to make that person Minister of Mines. He is going to make him Minister of Health, where the incidence of conflict will be reduced, or say to the member: "Look, your holdings are so diverse that there is no cabinet portfolio that you will be able to undertake and act in without an allegation being made to the commissioner. Therefore, I am very sorry. You can divest if you want to and come back and speak to me, but if you are not prepared to, there isn't a place in the cabinet for you."

Mr. Chairman: It is 1:05 p.m. Mr. Scott, can you come back tomorrow at 10 o'clock?

Hon. Mr. Scott: Yes, and I will come back this afternoon to hear Mr. Aird.

Can I just add to the committee, because Mr. Aird will touch on it, one point that I think you will want to have in your minds? Section 7 caused Mr. Aird a good deal of trouble and he wrote a letter to the Clerk which I think you have in the bundle I gave you, in which he sets out some changes. One of the troubles was the words "carry on a business, including the management of personal financial interests." He says, "That means a cabinet minister could not even go to the bank," which is how you manage your personal financial interests. He could not run his own savings account.

If we had been asked for our answer, our answer would have been, "No, what we are prohibiting is the carrying on of business." An example of that is owning a lot of shareholdings and running them.

What we propose in the discussion paper is to take out "including the management of personal financial interests," and say if it is carrying on a business, no matter what it is, it will be prohibited.

Mr. Aird's second problem has to do with the trust, because what we say is, if the member has a business before he enters cabinet, he can appoint a manager under subsection 4. The use of the words "trust" and "management trust" has created difficulties because it suggests comparisons with the blind

trust. There is no blind trust here, and the word "trust" really is not necessary. "Manager" would do the job, an arm's-length manager under terms appointed by the commissioner, who cannot take orders and who commits an offence if he does so and who must report to the minister what he owns. The minister will know every day that his manager has acquired this asset or that asset, so he is at risk every day if he does not watch to make his declarations.

Mr. Aird was concerned about what you do with small or large shareholdings in equities. If you own a portfolio that, let us say, has \$1,000 worth of shares in it, you might trade those. You might look at the Globe and Mail in the morning and you might decide to sell five today and five next month. Mr. Aird says--before we get to that, our answer to that was perhaps a difficult one but it was, "Look, when the management of those share interests becomes a business, then the commissioner will say: 'You cannot do that any more. It has become a business.'" But we did not believe that if you owned 100 International Nickel shares and that is all and you decided to sell them six months from now, you should be prevented from doing that.

Mr. Aird does and he reads the act so that if you own any equities, as he calls them, they must be managed, no matter how few they are. He says the act does not require him to do that, but that was a determination he made to carry forward the spirit of the act.

What it means, for example, is that a member who is a farmer who has incorporated his farm, as many of them have these days, and who therefore does not own a farm but owns shares in a company that owns a farm, has to appoint a manager for those shares, at considerable expense from time to time.

That is all I had.

Mr. Philip: The manager can be his wife or his son.

Hon. Mr. Scott: No. Under subsection 4--and it is perhaps, if I may, important to make that point--first of all, the terms of the management under clause (a) have to be approved by the commissioner; he has to see the management terms. Under clause (b), the trustees or the managers shall be persons who are at arm's length with the member and approved by the commissioner. He will say your wife or son is not at arm's length. It has to be a stranger. Clause (c) says the trustee shall not consult with the member with respect to managing the property. They are not entitled to come to the member and say, "I am thinking of doing this," or, "I am thinking of selling that." But under clause (d), they must report all changes in the management, not only to the member but to the commissioner.

Mr. Chairman: We have a number of people who have expressed an interest in coming before the committee. We could probably come back at about 2:45 and discuss that at that time, before we hear Mr. Aird.

The committee recessed at 1:10 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

MONDAY, JANUARY 11, 1988

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)
VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Faubert, Frank (Scarborough-Ellesmere L)
Johnson, Jack (Wellington PC)
McClelland, Carman (Brampton North L)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)
Sullivan, Barbara (Halton Centre L)
Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. J. M. Johnson
LeBourdais, Linda (Etobicoke West L) for Mr. Morin
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Klein, Susan, Legislative Counsel

Witnesses:

Aird, Hon. John Black, Interim Commissioner; with Aird and Berlis

From Aird and Berlis:

Bennett, Eldon J.
Spence, Robert A.

From the Ministry of the Attorney General:

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, January 11, 1988

The committee resumed at 2:55 p.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT
(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE
(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: We will call this committee meeting to order. There are actually two matters we should discuss at this point before we have Mr. Aird. The first concerns smoking in the committee. It has been drawn to my attention by at least two people that we should deal with this subject. As you know, there are some committees that do not permit smoking. There were some concerns expressed this morning that it is extremely difficult for some people who find it a form of health hazard to have smoking here. I am just asking the committee how it wants to deal with this matter today. Do you want to do the same that one other committee has done and not have any smoking in the committee room?

Mr. Sterling: I will second that motion.

Mr. Chairman: I am not making a motion. I am asking you how you want to deal with it.

Mrs. LeBourdais: I would so move.

Mr. Chairman: Mrs. LeBourdais moves that we not permit any smoking in the committee.

Is there any discussion? All those in favour? All those opposed? It looks like not everybody voted. Can we have everybody vote? Let us have that vote again and see everybody vote because I think it is pretty important.

All those in favour of not permitting smoking in the committee room? As I see, there are five hands up.

All those opposed? There are two opposed.

Mr. Breaugh: It is kind of a Tip O'Neill style vote you had there. You keep talking until you get the votes you want. It is fascinating that you took the vote three times until you got the one you wanted. Anybody who works at it that hard probably deserves to win. You could anticipate some quorum calls too.

Mr. Chairman: With regard to the second item, there are a few people who have asked to appear before the committee. We did not know of anyone until this morning so they could not be scheduled. We have Ken Bryden, who can come tomorrow morning and appear before us. We have Michael Smither of Municipal World, who can come before us on Wednesday. We have Judy Hunter from Ottawa, who can come before us on Wednesday too. That means we have one person for tomorrow and we could have the Attorney General (Mr. Scott), as you know, tomorrow morning. We could have Mr. Bryden with us tomorrow morning.

If we finish with those two people tomorrow morning, that means we would not have anything tomorrow afternoon. I do not imagine the committee wants to discuss the bill clause by clause until it can hear all the witnesses. That would mean we would finish with the witnesses on Wednesday and then not have any more before we go into clause-by-clause debate either late Wednesday or on Thursday.

1500

Mr. Breaugh: If that is the case, Mr. Chairman, I think you are going to have to rearrange some plans. As I understood it, the original idea was that we would try to do five days this week.

Mr. Chairman: Yes.

Mr. Breaugh: If you are not going to start clause-by-clause until late Wednesday afternoon or Thursday morning, I think you had better plan now on sitting Tuesday, Wednesday and Thursday next week.

Mrs. Sullivan: Can we eliminate Friday this week in that case?

Mr. Breaugh: It would make some sense to me that we do not bother trying to--I do not intend to do this bill in a day. I was prepared to give it a shot to do it in five days this week. It is apparent to me now that that cannot be done. I would suggest we do not sit on Friday this week and come back Tuesday, Wednesday and Thursday of next week.

Mr. Eves: I have a personal conflict next Thursday, when I am required to be in my riding at the opening of a ski hill, which the government so generously decided to give some funding to during the election campaign. If other committee members are able, I would prefer to start sitting next week on Monday. I agree with what Mr. Breaugh is saying for sure about this Friday. If we are not going to start clause-by-clause perhaps until Thursday morning, there is no way we are going to get finished.

Mr. Breaugh: You want to do Monday, Tuesday and Wednesday?

Mr. Eves: Right.

Mr. Chairman: If we could sit Monday, Tuesday and Wednesday, do you feel we can finish it by Wednesday?

Mr. Breaugh: I have a bit of a problem next Monday, but I will see if I can rearrange things.

Mr. Chairman: We would sit at 10 on Monday? Can we start early on Monday so we can deal with it as quickly as possible? If we take Monday morning off, we might not be able to finish it by Wednesday. If we start Monday morning, we can do it.

Mr. Breaugh: Just so everybody is clear, I do not intend to do any stalling on this bill, but in my view, this is very complicated stuff and we are not going to do this in a day. Everybody should understand that.

Mr. Cordiano: We do have some problems on a couple of the days. First, we are having a caucus meeting--I think that slipped your mind--next week, Tuesday. You may want to get around that problem.

Mr. Chairman: What time on Tuesday?

Mr. Cordiano: When caucus meetings are held, at 10.

Mr. Chairman: Is that all day or just the morning?

Mr. Cordiano: In the morning, two hours to two and a half hours.

Mr. Chairman: So it looks as if we start on Monday at 10, go through all day Monday, have Tuesday morning off, sit Tuesday afternoon and Wednesday all day.

Mr. Breaugh: There is probably a bit of a problem. If I am going to rearrange my schedule, other people are going to have to rearrange theirs. I do not want to be petulant, but we are all dealing with constituency matters and they want us there. I am prepared to say no to them, but not if the same rule does not apply to other people. I think a bit of courtesy is involved here.

Mr. Cordiano: We have from Monday to Thursday in which to be able to do this. I think we can be flexible within those days.

Mr. Chairman: OK. We will leave it at that, and then if we find later on it does not work out, we can make some changes.

The next person we want to hear from with regard to Bill 1 is the Honourable John Black Aird. Mr. Aird, would you like to come forth, together with your assistants, and take the seats at the other table? You may want to introduce your two assistants.

Hon. Mr. Aird: They are Eldon Bennett and Rob Spence.

Mr. Chairman: We had the benefit of the views of the Attorney General this morning for a short period of time. He was not able to finish with his full explanation of the bill, Mr. Aird, but he did cover a number of matters and he is coming back tomorrow morning at 10 o'clock to complete those. He also indicated that he hoped to get here this afternoon to hear part of your presentation, if not all of it. If you want to proceed, please do.

HONOURABLE JOHN BLACK AIRD

Hon. Mr. Aird: Thank you very much. I was not sure of the procedure that you wish to follow. I prepared a very short opening statement, which--I beg your indulgence--I would like to read. I could speak to it, but it probably would be of more use to the committee if I read it.

I am very grateful to be here today. I might say that I understand it is a bit of a first. I used to go by this committee room very carefully for some five or six years, but I am pleased to be here.

Acting as interim commissioner, as I did, I have found it interesting to gain an understanding of the operation of the bill as it would work if it were law. It would probably be fair to say that that experience has given me and my colleagues a clear understanding of the operational strength and problems of the bill.

In 1986 the Premier (Mr. Peterson) asked me to provide recommendations for government action in this area. After reviewing--and, I might say, at some length--the conflict regimes in other English-speaking countries and in western Europe, I recommended a system which would have the following aspects: (1) full and continuing disclosure by members of their financial assets and dealings; (2) a clear set of rules of conduct; (3) the establishment of the office of commissioner to assist the members, supervise the system and adjudicate upon allegations of conflict; and (4) provisions for penalties to be imposed by the assembly.

In my view, Bill 1 largely achieves these objectives. The system of meeting with each member, while time-consuming, has been valuable for the members and my understanding of the problems which arise. Where I have encountered difficulty is in the interpretation of certain provisions of the bill. Where I have found the intent less than clear, I have had to interpret the provisions of the bill in what I believe to be a consistent and sensible manner. I believe that the provisions of the bill dealing with the meaning of management of personal financial interests and alternatives to the management trust should be clarified so that the rules of conduct for cabinet ministers are clear.

That is my very brief opening statement. I am pleased to entertain any questions from any one or all of you related to the experience that we have had.

Could I emphasize one thing that I believe has been very important to me? That has been the meeting with the various members, particularly the members of the cabinet, and their spouses, where appropriate. I think that has been a very, very useful exercise, not only for them but also for me in trying to understand the role of the commissioner.

Secondly, I would like to say that I have tried my best to meet as many as possible. This is a difficult thing to arrange. I think we have now interviewed about 80 members of the Liberal caucus--we have not yet finished that part of the job--and we have learned quite a bit about the problems that have arisen. As I say, they mostly relate to the management of personal financial interests and, secondly, to the interpretation that one would put upon management trusts.

Perhaps in the course of the questioning this will come forward, but I would draw to your attention, because I reread the several letters that I had written on this subject very recently--I read them about six o'clock this morning, to be honest with you--and the one thing that is different about this bill and in my recommendations is that I recommended that the trustee should be the commissioner and/or someone appointed by the commissioner. I think this is the difference that I have observed as being perhaps the most salient difference between my recommendation of last year and the present regime. The whole area of management trust, as such, I think is something that is complicated and I would be very pleased to discuss with all of you how I see it. Thank you.

Mr. Chairman: Thank you, Mr. Aird. Mr. Polsinelli has already indicated he has some questions and I am sure there will be questions from other members of the committee.

Mr. Polsinelli: Mr. Aird, initially, thank you very much for attending this afternoon. I am glad you took the time to come before the committee and answer some of our questions. I would also like to state that I am very happy you were appointed the interim commissioner and I hope that once the bill becomes law, then you will be the regular commissioner appointed under this bill.

I have a number of questions, principally resulting from the presentations we received this morning. If possible, I would like to receive your interpretation of at least two sections of this act. The first is subsection 12(2) of the act. I am sure you are familiar with perhaps every word in this bill and I would like your opinion as to what the impact of that subsection is in this legislation.

Hon. Mr. Aird: As you all know, the public disclosure is in fact made by me, or was made by me in this role as interim commissioner. It took quite a bit of thought deciding where to draw the line as to what has been disclosed on the confidential and private basis and to turn around and make appropriate disclosure. I think the major one that concerned me related to the value of assets and we debated this at some length. I think I debated it with you the day you came to meet with me and my colleagues.

The conclusion, for better or worse, but I think it is accurate, is that it really does not matter what the value of the asset is in fact. If someone is going to prefer a private position to the public trust, the value does not matter that much. The impact, to me, largely depended on that and that is the way I went on it.

Mr. Polsinelli: More specifically, in dealing with the requirement that the source of income be disclosed, how would you define "source of income"? Would that in your opinion be the client lists of a--as an example, could it be construed as being the individuals that a partnership that manufactures widgets deals with? The client list, the people who purchase widgets from the manufacturer, a partnership that manufactures widgets, the people whom they sell the widgets to, could they be interpreted as being the people who provide the income to the partnership? I do not know if I am making myself clear.

Hon. Mr. Aird: No, you are not.

Mr. Polsinelli: All right. Let me give you then the specific example we discussed this morning. Would a member of the Legislature who has a one per cent interest in McCarthy and McCarthy, and is practising law on a part-time basis, or not practising law but he does have and holds that one per cent interest in McCarthy and McCarthy, have to disclose to the commissioner every client of McCarthy and McCarthy because he has a partnership interest?

Hon. Mr. Aird: Obviously, common sense prevails. No is the answer.

Mr. Polsinelli: He would not have to?

Hon. Mr. Aird: No.

Mr. Polsinelli: How would you define then the term "source of income" in the legislation, where a member has to disclose not only the income he receives, the anticipated and past income, but also the source of income? How would you define that term?

Hon. Mr. Aird: I think I might ask Mr. Bennett to help me through this. I am not--

Mr. Polsinelli: That is fine.

Mr. Bennett: Mr. Polsinelli, if I understand your question, it was an issue that arose when we began looking at real cases as to what "source of income" meant. Practically speaking, if one wanted to go back and follow the whole thing through to the first source of income, if you like, one would be involved in a hopeless task. If you have somebody who has an interest in a company of some sort that carries on business, you would be looking at every transaction that business was involved in to try to determine what the source of the income was. Rather than do that, we looked at where the individual--that is, the individual member--was receiving the source of income. If that was a company, then we said the income came from that company, which was involved in a particular sort of business. To go beyond that would have been an impossible task for us.

Mr. Spence: May I just make one addition there? In the carrying on of the actual business by Mr. Aird, he has gone beyond Mr. Bennett's statement for dealings with the government. I believe Mr. Aird pointed this out, that although the source of income may have some area of fuzziness attached to it, Mr. Aird has asked everybody, without exception, whether or not he does business directly himself, through a partnership--in your example, the McCarthy and McCarthy law partnership--through a corporation or through any other business vehicle, "Does that vehicle do business with or get money from the government?" the government being defined as the agencies, boards and commissions, and there is actually a list of agencies, boards and commissions of the government.

Mr. Polsinelli: I think you have also hit on my second question, but to put my mind at ease with respect to my first question, you would be treating a partnership in the same manner as a private corporation in defining what a source of income is.

Mr. Bennett: Yes.

Mr. Polsinelli: With respect to the second question, and we have already touched on that, the legislation--clause 11(2)(b), I believe--requires that a member who has the controlling interest in a private company disclose a statement of income for the private company. As I read it, the legislation does not require the private company to disclose whether it is doing any business with the government or whether it has received any grants from the government.

You have indicated that you have already requested members to give that information. Would that information also be applicable and would the members still be required to give it if their business with the government was through a private corporation that they had the controlling interest of?

Hon. Mr. Aird: I have not been faced with the question, but the answer is, "Why not?"

Mr. Polsinelli: My position is that they should.

Hon. Mr. Aird: Yes.

Mr. Polsinelli: I am just questioning whether or not you believe the legislation gives you the authority to request that.

Mr. Bennett: We did not think the legislation clearly gave the authority to do that; we did it.

Mr. Polsinelli: That is fine. Thank you.

Mr. Breaugh: I do not quite know how to do this, so I will just blunder along.

I want to register my objection for starters. I do not mean this in any personal sense at all, but I really do regret that a law that has not yet been enacted has already got a commissioner operating.

I want to put it on the record today that, as an opposition member and someone who has had an interest for some time in conflict-of-interest legislation, I am a little taken aback that nobody even bothered, even when original objections had been voiced rather clearly, I thought, to this rather unusual process of first doing what you want to do and then as an afterthought saying, "We will pass the law."

I thought we had objected to that with some strength and that it would stop there or at least that there would be a pause. Now I find out that the rest of the Liberal caucus is going through the process as well. I would have thought it would have been good common sense, once the government had introduced its bill, just to kind of put a halt on the process till we see what the Legislature does with this bill. But it seems to me it is business as usual.

Did you get any direction to proceed?

Hon. Mr. Scott: Before the question is responded to, if I might be permitted, I should make this observation. I know the honourable member does not intend it as an attack on Mr. Aird, which it is not intended to be.

Mr. Breaugh: No, it is not.

1520

Hon. Mr. Scott: The fact is that when our government came to office, we were expected by all parties to apply some conflict-of-interest rules or guidelines of some description, and if we had not done so, we would have been criticized. Had we applied ones that opposition members or the press regarded as inadequate or inappropriate, we would have been criticized. As we had already, in the previous House, introduced a bill which we were eager to pass at that time but which we were not able to reach, we elected, as we had a perfect right to do, to apply this bill to ourselves.

If the Legislature decides in this committee or in the Legislature to amend it or change it, so be it; but, in the meantime, we have to have some guidelines, and this bill is our guidelines. If at the end of the day you say the bill should not be passed and your colleagues agree it should be changed,

it will be changed; but this was a decision the government made to apply the guidelines that it thought in statutory form should be applied to itself and to its members. We have not suggested that anybody else should be bound by it until the law is passed, and we would not think of doing that.

In that sense, we asked Mr. Aird to take on these duties.

Mr. Breaugh: I will have my political argument with you a little later on.

Hon. Mr. Scott: Well, the point I am making is that you should have it with me, not with Mr. Aird.

Mr. Breaugh: And I will.

Hon. Mr. Scott: All right.

Mr. Breaugh: To get back to the question I asked you, were you asked on the part of the government to proceed with the remainder of the Liberal caucus? When did that happen?

Hon. Mr. Aird: I think right from the beginning, Mr. Breaugh.

Mr. Breaugh: So you just kind of went from day one through the process.

Hon. Mr. Aird: Yes. Mr. Breaugh, let me just amplify a little bit. I am very grateful to the Attorney General for springing to my defence, but let me tell you, I am perfectly capable of my own defence.

One, this is not a job that one volunteers for. Two, unless the commissioner, be it me or be it whosoever, has the support of all the parties of the House--in effect, an Ombudsman--then I do not think it is going to work.

Mr. Breaugh: That is my problem. There is the difficulty that I have with this process.

Hon. Mr. Aird: Just let me go on a bit. When Mr. Peterson asked me in the first instance a year ago to bring in these recommendations, which we have spent a good deal of time on and have thought about, I decided that, because of the fact that I have been Lieutenant Governor of this province, in no way would I be paid for that position. I also decided that my colleagues would be paid at the normal rates that one associates with it. The second time this came around, which was with the introduction of this legislation and when the Premier asked me, I came to the same conclusion--perhaps not sensibly, but none the less, I felt that way about it.

So, in effect, the taxpayers of this province are not paying an interim commissioner anything. I would like you to understand that, because it is important, I think, as I gather from the thrust of your questions, whether or not there is objectivity or lack of, perhaps, thought in how all this has been processed and how it has come to be.

We have gone through this process on the assumption that, in effect, they are guidelines. But I would say to you unequivocally that unless this bill has the support of all members of this House and unless the final commissioner, whosoever he or she may be, has the support of everyone, it will not work.

Mr. Breaugh: You see, that is my problem; and as someone who is a very distinguished Canadian and someone who has offered great service to the public of Ontario--

Hon. Mr. Aird: Thank you.

Mr. Breaugh: --you have been put, I think, in a very difficult situation. As an opposition member, for example, I would very much like to be able to say: "Here is a great commissioner; this is a great law. We all agree with that." But before I get my chance as a legislator to kind of mould the law, it is all in effect, and it has been in effect for the better part of a year by the time we get a chance to vote on it. It is cart-before-the-horse stuff and it makes it very awkward, because I would like to be able to say, and we will try, as we discussed this morning, to get it to the point where we have consensus legislation, because I believe very strongly in what you have just said.

If every member of the assembly, virtually, does not agree that this is a fair and reasonable way to proceed, it is not going to work no matter how complicated you make it, no matter how tough the commissioner is. If there is somebody in the 130 members of the assembly who thinks this was not done the right way, it causes a problem. I think it is really difficult to pick it up at this stage and try to make it around so that we are all happy with it and it is consensus legislation, because it has been in operation for the better part of a year.

Hon. Mr. Aird: Yes, but let me tell you, Mr. Breaugh, and I am sure you would be the first to agree with me, that no legislation is ever perfect and it is always going to be amended one way or the other.

I did not have the opportunity of hearing the Attorney General this morning or his views on this subject, but my understanding is that he is very open to amendments.

Hon. Mr. Scott: Absolutely.

Mr. Breaugh: I have had to listen to this man a good deal. He is very open to listening to amendments, but there is a difference between hearing what amendments are being proposed and accepting them. He will listen to almost anything I have to say, but he does not always do what he is told. He is a very awkward man.

Hon. Mr. Scott: We had two years where we came very close to doing everything we were told. We have drawn back, but just a little bit.

Mr. Breaugh: I want to get after some of what I think are the difficulties with the process here, some of which you have identified in your letter to the committee and some of which have been identified by, if I may make reference briefly to it, the Parker commission, because we should learn from our mistakes and there have certainly been lots made in the last little while.

Part of what might be called the keystone to this type of legislation, no matter who tries it, is a form of public disclosure. You have had an opportunity now to go through the process privately and to prepare a set of documents that fulfil, I think, the proposed requirements under public disclosure here. Parker, in his final observations, makes that the first, number one thing out of the block, that a public disclosure system is essential to what is being done here.

I will voice again the problem I have. It is not a shortage of paper. These are the documents that were made public: lots of paper; lots of blank pages in here too; lots of places where the heading is included, but there is no information underneath; lots of indication in here that somebody owns stock in something, but not how much or how that is being handled.

I have some problem with this. I have listened to people in other jurisdictions talk at great length about their public disclosure techniques. Most of them, I think it is fair to say, come to the conclusion after a while that once you start to make something public, sooner or later everything is public, one way or the other. The Americans, in particular, have a wonderful way of--the legislators write a law this way and the lawyers go to work down this road and sooner or later they kind of meet and everything becomes public.

I would be interested in hearing your comments on the public disclosure provisions in the bill, particularly your experience in putting forward the public disclosure documents with this cabinet. I want to preface by saying, as I did this morning, that I think we have missed the boat here. There is a lot of paper there; there is not a great deal of information. There are some areas where a potential conflict is identified, but we are not given much in the way of a clue whether there is a very real conflict of interest; whether it is just a perception and not reality we are dealing with; whether somebody owns \$10 worth of shares in a company--so what? who cares?--or owns half the company, in which case there might well be.

I would like to hear your comments on going from the private disclosures, which came to you as the commissioner--see, I am being polite--as opposed to what the public has a right to know. Does the public really get full public disclosure? It certainly did not the first time around. Should we move closer to that?

Hon. Mr. Aird: The overriding rule is full public disclosure and continuing public disclosure. I felt that everyone who came and met with me and with my colleagues did this very best to make as full disclosure as possible. I think it is all there, whether it is perception or fact. I have no problem with that whatsoever. I met with every one of them.

As to what is left out, I really have not thought of that, Mr. Breaugh. I think some things no doubt should be left out, things like residence addresses and so on. We did our best to come up with a full public disclosure.

Mr. Breaugh: I do not want to get into an individual cabinet member's whatever. I will cover up the name here, but under this completely blank page there is a section called liabilities and the public disclosure says nil. That does not tell me a whole lot of information about anybody. You list corporate names. You list investments that various people had by name. For all of the paper that is here, there is not a lot of information here.

1530

Hon. Mr. Aird: When somebody says nil to me, I believe him; I have to believe him.

Mr. Breaugh: Here is my problem. I am setting up--forgive me, I thought I was setting up a full public disclosure system. It does not do that. I thought we were providing to people in Ontario information on people's assets and liabilities. I am hard pressed to argue that we are doing that in a very public way at all.

Many of us have looked at American experience in this regard. It is not quite true that an American who is being considered for an appointment, for example, has his total financial statement made public, but it is pretty close to that. When you go through the Congressional Records on people who are in public office or holding appointments made by the President of the United States or something like that, there is access to some very detailed financial information. We are at the other end of that scale. This is not very detailed information, in my view. Do you understand the problem I am getting at? We are holding out to the public that here is public disclosure, but when you read the actual paper, there is no information here. We are not disclosing very much to the public.

Hon. Mr. Aird: But whether or not you are the commissioner or the interim commissioner and you are sitting there with, probably, minister and spouse and they say they have no liabilities, that is what they say.

Mr. Breaugh: Here is the conundrum that I am caught on. I do not want to go to an American system which has Federal Bureau of Investigation records, tax records and audits. It is all there. I really do not want that and I would like to say we will find a nice, moderate, Canadian way of doing things here. Yet the first run at my moderate, Canadian way of doing things does not give me much in the way of information.

Mr. Chairman: I am not quite sure where you are going here. Are you saying that they obviously do have liabilities and they are saying they do not? Are you saying you should have the tax records? I am not quite sure.

Mr. Breaugh: I really did not want to do this, but--

Mr. Chairman: I mean, you are obviously prepared to do it.

Mr. Breaugh: I am asking the commissioner if he really thinks we have provided any information on the people in the current cabinet by listing what companies they might have assets and financial interests in. For example, did the declaration that somebody has an interest in 729252 Ontario Inc. shares tell anybody anything?

Hon. Mr. Aird: It tells them what he owns.

Mr. Breaugh: It does not tell me a thing. I do not know what that numbered company is; I do not know how many shares he has.

Hon. Mr. Aird: Let me just back up a little bit. I am not the commissioner.

Mr. Breaugh: I will pass on that.

Hon. Mr. Aird: You should.

Mr. Breaugh: Here is my problem. I have someone in front of me now who is the acting commissioner, who has taken a cabinet through this. I am trying to get his response. Does this proposal do the right thing? Do we tell the public of Ontario information about somebody when we list a numbered company and indicate that the person has shares in it? It does not tell me a great deal. Can we do this better? Is there another way to go about this? Should there be more public disclosure?

Hon. Mr. Scott: If I can just interrupt, I take it we would agree that what that tells you is that the person owns shares in a numbered company. The charter of the numbered company is a matter of public record and what it does as a numbered company is provided for by the companies branch, if you want to make an inquiry. Whether that information should be spelled out in the return is an interesting question. But he has listed that he owns shares in that company just as much as if he listed he owned shares in a company whose name was known to you, like International Nickel.

Mr. Spence: Perhaps I can add to that. I do not know what statement you are reading from. If there was a numbered company or indeed any other named company that was a private corporation, so that a reader could not get the information from a public source, we endeavoured to give some descriptive statement as to what that corporation was and what it did and specifically whether it had any dealings with the government. I do not know which one you are reading but it may be that in the notes that you have with your statement, the reader would learn something else about your numbered company.

Mr. Breaugh: Let me try to make this point--

Mr. Sterling: In supplementary to what Mr. Breaugh is saying, would it say, for instance, that the numbered company had a land holding at such and such a corner of such and such a street?

Mr. Spence: No, it would not list every asset, and I do not think in any situation it goes back to source of income. If there is a corporation or a partnership being dealt with, every asset of the corporation or the partnership is not listed. Mr. Aird asked people if it did business with the government but that was the extent of isolating separate contracts or financial dealings.

Mr. Sterling: There is no generic description of the kind of business that numbered company is, whether it is a printing business, a land development business or a consulting business?

Mr. Spence: I think we tried in each case to give some descriptive statement about the company. Presumably the corporate records would also show the head office and the officers, and presumably it would be open to people to contact them to find out more about the company. We tried to give the clues with the statement of the ownership, and anybody who is interested in it is presumably free to follow up on it.

Mr. Sterling: Can I continue on a supplementary? If, for instance, that numbered company was a solely owned company or it was owned by the member and his or her spouse, you still would not name all the holdings of that particular company.

Mr. Spence: No.

Mr. Sterling: But if they were held personally in their personal names or in joint ownership, you would name all those pieces of real estate so that if a member wanted to circumvent the public from knowing what real estate holdings he might have--I am just using an example of the way the legislation is--then what he would do is create a corporation and let the corporation own the land. He could do that.

Mr. Breaugh: Let me try to make this point as clear as I can. Here is the page I am reading from. It purports to be a public disclosure document,

telling the public--not the lawyers or people who do this for a living--some information about the people who lead their political parties and government in Ontario. See if this language makes any sense to anybody in this room. See if you can tell me whether any information was transferred by this list.

"Interests in private companies, 729252 Ontario Inc. shares. Residence. RRSP (self-directed) portfolio: industrial growth fund. Bank deposits, a bank named in (a) Toronto, (b) London. Canada Treasury bills. Canada savings bonds. Participation in the following underwriting syndicates of Lloyd's of London: (a) Marine syndicates: 228, 321, 334, 406, 741, 851, 888; (b) Nonmarine syndicates: 43, 90, 435, 799; (c) Aviation syndicate, 312; (d) Motor syndicate, 533."

There are a lot of words there and a lot of numbers, but for me there is no information. This does not tell me anything about anybody. I do not speak this language; neither does 99 per cent of the population of Ontario. A corporate lawyer might be able to make some sense out of this or a person who had some experience in the investment world might understand what is being said here, but I do not.

See what I mean? I am looking for information and there is none here. If I wanted to hire Ian Scott as my lawyer and say, "Ian, find out who these firms are and what these numbered corporations mean," perhaps I could, but that really is not public disclosure, it is? That means in order to interpret the information that is made available to me, I have to hire some expertise.

Do you see my problem? I understand what you are trying to do and I understand the purpose of the exercise. It seems to me we have missed. We are not giving the public information here. I am looking for a way that you might see as being reasonable to kind of buff us out of this problem into something where the public might actually know. I appreciate the argument that you alluded to briefly where you said that amount does not matter, but I tend to differ a bit.

Interjection.

Mr. Breaugh: OK, but I think that we are not telling the public the truth when we are saying, "There is a public disclosure section to this proposal and this is the kind of information that you will get from it," because, to most of my constituents, this whole page of numbers and names means nothing.

1540

Mr. Cordiano: Just going back to this point about a numbered company and relevant information, I would probably want to ask Mr. Breaugh what he would want included by way of information in that kind of disclosure. Describing what the company does? What is it exactly he is saying should be listed and disclosed there? Presumably what we are talking about here is a private company or shares that are owned in that company.

If you take that one step further and talk about publicly traded shares on the stock market and I own 10 per cent of some company that is publicly traded, are we going to list, in effect, all the assets owned by that company? Is that something that is going to be left up to the individual pursuing this information to determine, whether there is something there that ought to be brought forward for the public to know? Should the commissioner then look at

these companies that are publicly traded and point out to the reader that this company is involved in X number of things? In a sense, that is what you are asking for in all this.

Mr. Breaugh: I will pursue this a bit and try not to belabour it.

Hon. Mr. Aird: I hear what you are saying, Mr. Breaugh. I hear it clearly. The test I tried to apply all the way throughout the exercise was, is there a decision-making function in the hands of the minister or the member of the assembly? If in my opinion there was not, then that is one thing.

I had a lot of trouble, I must say, going back to your point and talking about whether or not you own shares in a public company. If you have 1,000 shares in Imperial Oil, there is no way you are going to run into the decision-making process of that company. On the other hand, in order to be consistent throughout the whole piece, I came down by saying that really every member of the cabinet should just own bonds or Treasury notes or general investment certificates. I personally had a problem on this on the decision-making side of things, but that I think is the ultimate test. It is a tough one, I agree with you; not easy.

Mr. Breaugh: The reason I am having difficulty here, preverse as it sounds, is that I do understand the problems you faced and I do understand how your solutions make eminent sense to you. I am trying to put forward the argument that to the people I represent, this whole page of numbers and names means nothing. They do not speak this language. We are purporting to publicly disclose the assets of the members of cabinet and we have given it in some Swahili-type language that they do not understand and that we cannot rightfully expect them to understand.

Hon. Mr. Aird: Do you have a solution to this problem?

Mr. Breaugh: I think, for example, that some moderation of this listing is required. Someone now has to take this numbered corporation and provide some kind of description or indication what that company is and what it does.

Mr. Bennett: Mr. Breaugh, the example you are reading from may be a bit unfair because if you read further on, I think there is a description if I recall correctly. Is that not a personal holding company you are referring to?

Mr. Chairman: Can we permit one more supplementary here, Mr. Breaugh?

Mr. McClelland: I think I understand where you are coming from, Mr. Breaugh, but ultimately you have to tie it back to what is the purpose of the disclosure. The purpose and rationale for disclosure is to determine in a given fact situation whether or not a conflict situation arose. It ties back to all relevant information tied into the discussion. I would be interested in hearing Mr. Aird tell us a little bit about all relevant information and carry through. Indeed, we began to touch on that.

It seems to me, and I would like to flush this out if you would please, sir, that relevant information does not necessarily mean for the average person on the street, either yourself or myself, to understand everything that an individual owns. What it does is provide the mechanism for a subsequent determination by an official or an officer of the assembly whether or not a conflict did in fact take place, or prior to a situation arising, to give advice thereto.

It seems to me that to detail at length what 34892 Ontario Inc. holds or does not hold, with respect, is really not all that pertinent. What is pertinent is that the public be assured of a mechanism that provides an independent office to, first, provide advice and, second, make a determination and recommend that. It seems to me that is where the key, the operative element, is in this--all relevant information. Then we look at step 2 and ask: "What are the exceptions? What is the rationale for the exceptions?"

That is the extent of relevancy, not whether I know--I think it would be impractical and does not serve any function, quite candidly. I would like to hear Mr. Aird's comments.

Hon. Mr. Aird: I think we get once again into the field of perception and reality. I think this is what Mr. Breaugh was touching on. What is the perception?

The perception is that perhaps there should be a fuller description in the event that that company--whatever company it is, and I do not recognize to whom he is referring--if there is a decision-making process in there that might have some perception of preferring a private interest ahead of the public interest, then that is--

Mr. McClelland: Sir, am I right in presuming--and I would like some help on this--that it never was in your deliberation, as you began to look through a process of legislation that we may have some time down the road with some changes, that the rationale or the purpose for it was to have public disclosure of all--I mean, that is not necessarily the rationale for the public to have an open book for every member. Is it not rather to move it back a step and say, to provide advice and, second, to make a determination? That is, I suppose, the difference--

Hon. Mr. Aird: It is not relevant, so it gets to be a personal judgement once again.

Mr. Philip: Am I correct in assuming that, under the way things are in this bill at the present time, I could be the Minister of Transportation, for example, own large amounts of land in a particular area under a numbered company, the assets of that holding company being that land, and there would be no way in which either you--unless you became curious and started asking questions--or the public would know, unless the minister decided to disclose that information and declare a conflict of interest? He could conceivably, without anybody knowing, including yourself, build a subway right over it or make arrangements for the domed stadium right on property that he was sitting next to. Is that correct?

Hon. Mr. Aird: No, I do not think it is correct, Mr. Philip. I hope not, and it is more than a hope. It is sitting across a desk, and the minister is there and he is declaring his interest one way or the other and he is the Minister of Transportation. Forgive me, I am not familiar with what happens in cabinets because I have never been a member of one so I do not know really what happens in cabinets, but I come from a long line of Scottish-Canadian background. When people say, "This is the way it sits with me," this is the way it sits.

I just think perhaps that the situation you suggest is, of course, an absurd one. I think there are marginal ones in the middle someplace that might be much tougher to handle, but that would be up to the individual minister.

There has been such a spotlight on this whole thing, Mr. Philip, if I might say, that I think there is a very heavy burden on each individual member, not only of the assembly but also of the cabinet, to think about these things very, very carefully indeed.

Mr. Philip: I guess what I am saying is that in publicly traded companies any suspicious member of the public can probably find out what is going on and where that 10 per cent ownership may be--may or may not. But in the case of a private holding company, I really wonder whether or not there is disclosure that is meaningful.

Hon. Mr. Aird: Mr. Chairman, could Mr. Bennett perhaps make a point?

Mr. Bennett: To take your example, though, if you had a numbered company that owned land, it is as simple as checking at the registry office to see who owns the land in the immediate vicinity of the area affected by the decision that has been made. If a decision is made to put a road through and that is going to benefit the people who own land contiguous to the road, it is a very simple matter to look in the registry office to see whether the numbered company owns land there. The minister or the member will have revealed the existence of the numbered company and the nature of its business, which would also be disclosed.

We are concerned about what Mr. Breaugh says, because I am sure that somewhere in that disclosure document there is more information than he has referred to; and if it is not there, it is oversight on our part because we did it in each case. You would have the numbered company, you would know the nature of the activity of that numbered company and it would be a very simple matter to check to see whether in fact the member had a conflict with respect to that.

1550

Mr. Sterling: Could I just interrupt on a matter of clarification? In order for you to find out from the registry office whether a numbered company or any company owns a particular piece of land, you have to know which land it is. You cannot go in and say, "Does John Jones own land in Ontario?" and get a printout of all of the land he owns.

Mr. Bennett: But in the example, where a decision is made to build the domed stadium or a subway on a particular parcel of land, it is no problem at all to walk in and say, "I would like a list of who owns what in this particular area," once you have designated the area, which I took to be the member's question.

Mr. Sterling: Yes. As a supplementary, if you will permit me, the problem with your analogy, or whatever it is, is that conflicts do not exist necessarily at the time you find out the information about the numbered company. Therefore, what would be more helpful, and I believe we may very well introduce an amendment to this effect, is that if it is a holding company, or in essence is a holding company, for the family in the larger context, then those specific assets should be revealed as if they were personal assets; otherwise--it may not be the domed stadium or something of that nature--I cannot see how we can allow an act to permit a corporate veil to come over the assets of a particular member if in fact disclosure is what you are after.

Hon. Mr. Aird: What you say, Mr. Sterling, makes good sense to me.

Mr. Bennett: Then of course, Mr. Sterling, you get into this other issue: At what level of ownership of the private company does what you are talking about, this kind of continuous disclosure of assets, begin? At what point does that kick in? Maybe it kicks in if you own one per cent; maybe not until you have financial control--

Mr. Sterling: I guess we would have to try to determine an arbitrary rule, which may or may not be fair in every instance. I know it is difficult.

Mr. Chairman: Let us go back to the original list, because there are people who are waiting who have their names on here.

Mrs. Sullivan: did you have a supplementary to this or was that a new question?

Mrs. Sullivan: This would be a new question.

Mr. Chairman: OK. Let us go back and finish with Mr. Breaugh and then go down the list, otherwise some of the people who have been waiting patiently will not have an opportunity to ask their question.

Mr. Breaugh: Judge Parker in his report put it succinctly, I think: "The rules pertaining to disclosure and divestment should be set out in plain English and French so they can be easily understood." That is basically what I am trying to say. When you present me with a list of numbered companies, it makes no sense to me. This would be fine if we were saying, "These are the papers or documents that have to be provided to accountants somewhere," but when you say this is a public disclosure document, the public--me, members of the assembly--has a right to expect it will be written and use language that we all understand.

I have two university degrees. I have been in here for 12 years. I ain't all that stupid. This piece of paper means absolutely nothing to me. It is in a language that I do not speak. Even in a simple thing like this--and I am not suggesting this is a fault--when you say to me that someone has absolutely no liabilities, I cannot believe it. In the world where I live, we own some things and we owe money on other things. We all have mortgages. We do not all pay cash for our cars. We have kids in university.

If we are going to have any credibility with the public, we have to be able to say, "In a technical sense, there are no liabilities here," but we have to use language that the people understand. Do you know how many of my constituents would be able to stand in public and say, "I have no liabilities"? They are all in the graveyard.

Hon. Mr. Aird: Mr. Breaugh, I asked the same question every time. I said: "Do you really mean you have no liabilities? Are your Visas paid up? Do you have a bank loan?" "No, I don't." That is all I can say--

Mr. Breaugh: I think we have a little perception problem here.

Hon. Mr. Aird: No. This is a factual thing. This is factual. I am sitting there across the desk--

Mr. Breaugh: There are a whole lot of millionaires in this cabinet.

OK. Let me move on then to a couple of other areas that I think are areas where you could help us a little bit.

We have talked on two or three occasions about divesting. It is part of the jargon of the trade now; Parker uses that term and several others do. We as a committee have struggled with the concept. Is there a need to say every once in a while that someone really has to get rid of something? Is that the commissioner's job? Is it the member of the cabinet's job? Is it the Premier's job? Whose job is it?

I am interested in your comments on this, and I preface it by saying that I cannot believe we would take it to the point where we are purporting to publicly disclose all of this but would not have some divesting process involved. I would advocate that it ought to be the commissioner's job, that he makes the judgement call. Others advocate that it is the members' job, that they make the judgement call. Surely we need to explore that area somewhat, and I would be interested in your comments on that.

Hon. Mr. Aird: You go back to what I originally thought about in the first report. I think there are certain situations where divestment really gets to be almost imperative--professional people, for example, lawyers, doctors and so on. I think it is very tough for them not to have to divest.

On the other hand, what I said was that although I did not like blind trusts at all, nor do I like them today--and I had nothing to do with the drafting of legislation, believe me--they have come up with management trusts, and I have had a lot of trouble with the management trust side, equally. So when you ask if a commissioner cannot force divestment, I think the facts of the situation will, in effect, cause the divestment. The only alternative, and maybe it is a sensible alternative, is the one that perhaps the government has chosen--I prefer it not to have happened, but it has happened--some kind of management trust.

Once again, I come back and say to you that my original recommendation on that was that I or the interim commissioner, whoever he or she may be, would not have to make the decision on who that trustee was. Because, once again, it is a subjective decision related to management of affairs. So I say to you that I really preferred the original version. On the other hand, I am dealing with one that relates to management and relates to how somebody operates his affairs in the event that they do not divest. I found this difficult.

Mr. Breaugh: So you would be advocating that it should be the commissioner who makes the judgement call.

Hon. Mr. Aird: Yes, I do.

Mr. Breaugh: One or two other little things bother me. There is quite a bit in what Parker had to say about all of this, but not much in this legislation, that talks about the other side of the coin: the lobbyist, the spouse and how you deal with all of that.

I find the relationship of the spouse to the member to be the most difficult thing. I am caught on the conundrum that my wife would tell me that what she earns and how she earns it is of no interest of the public and even if it is, it can go jump. That obligation on the part of the member to involve members of his family in disclosure or divesting or things like that is an awkward one. Most jurisdictions have struggled with this.

Do you see any clean way to go with this? I do not.

Hon. Mr. Aird: A clean way?

Mr. Breaugh: Clear, pat.

Hon. Mr. Aird: Clear. We wrestled with it, surely we did: a definition of spouse and so on. I have four children. One is 41, the oldest daughter. She said, "Of course they must be married." So did my second daughter, aged 38. My son, aged 34, said, "Don't be silly, father." My fourth child, my daughter, said: "Don't be ridiculous. This is a time of dual income and this is the world we live in." So I do not think the definition of spouse, as such, got to be a large problem as far as I was concerned.

What I was concerned about was whether that other person in a conjugal relationship or whatever you would like to call it, had an influence of any kind on the minister or the member; that is what I ended up by deciding.

Mr. Breaugh: Most places have taken a shot at defining the word "spouse" or "relationship," which is always awkward these days, for starters. Second, does the nonelected person have to get involved in all of this declaration?

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The problem that most people have run into is that, whether that is your intention or not, they do. I mean, you can write the law which says the designated spouse does not have to fill out the declaration, but if I fill out the declaration and the Toronto Star or the Globe and Mail or the Sun or somebody wants to pursue that, they are into it whether we like it or not. So you almost have to, by the nature of the business, involve them in some way.

One of my great concerns about all of this is that the paper flow can get immense. The lawyers and the accountants are laughing all the way to the bank and the public may not be getting any better service out of this at the end. To tell you the truth, that pile of documents told me nothing, and I know how much work and effort went into trying to provide a reasonable public disclosure process. I know how many late nights people filled out the forms, checked out documents and tried to provide explanations; but we missed, and I am concerned that as we bring these other people in, other spouses, lobbyists and things like that, we can cause a whole lot of pain and aggravation here without really doing any good. That is my concern.

Mr. Bennett: On the issue of spouses, when Mr. Aird was preparing his report in 1986--recommendations to the government with respect to what should be done in this area in his view--he was contacted by a number of women's groups, people of all political stripes, who were very concerned about the spousal aspect. A lot of women felt that if the disclosure regime were broad enough to necessarily involve the spouse, that would create real problems for women who wanted to go into politics. That was something we wrestled with when we were talking about what the recommendation should be.

Then, of course, you have the problem of private interests, and certainly in the legal regime in this country, spouses have an interest in what their spouses have. When you have this notion of private interest, in which spouses are linked in terms of their assets and their material goods, it is hard to separate the parties in terms of the necessity of disclosing if you are going to have an effective regime, and ultimately that is the way it came down in terms of recommendations. It is hard to get around the belief that you have to involve the spouse in order to have an effective conflicts regime.

Mr. Breaugh: You see, the--

Mr. Chairman: Mr. Breaugh, are you almost finished?

Mr. Breaugh: I was until you interrupted me. Now I may have to go a little while.

Mr. Chairman: I have four or five other people who have questions.

Mr. Breaugh: I will conclude then. A couple of the things that have been brought to my attention, in fact, are nontraditional. The woman is in the cabinet now and the husband has interests that are sometimes affected by the decisions of cabinet. It is not quite clear whether we have really dealt with this or not.

Without getting into specific examples, if the wife in this case is the cabinet minister and the husband is a major developer in Ontario, there are conflicts there that are really obvious, and it is not clear to me how we have really dealt with the conflicts. I know we have made them file pieces of paper. I know we may have prevented somebody from taking a particular position in cabinet. But it is difficult to explain to the public that the conflict has in any way diminished.

We have worked our way around it by filing pieces of paper. We have worked our definitions so that it is now legal. But the perception, in the end, is what is important. This is not about legal documents. This is about the public's perception of whether the right thing has been done. I am not sure we have gotten near that. I would be interested in your response to that.

Hon. Mr. Aird: Do you have any recommendations?

Mr. Breaugh: Yes. Do you think this approach really does anything for the public's perception that we are interested in preventing conflicts of interest from arising and that we have made a proposal here that will really, if not totally eliminate them, at least make sure they do not happen very often?

Hon. Mr. Aird: I think it is a large step forward. I do not think anything is ever perfect. It is a large step forward.

Mr. Breaugh: If there were someone in the chair, somebody else could ask a question now.

Mr. Chairman: I am sure they will. Mr. Philip?

Mr. Philip: Mr. Sterling's comments and supplementaries led in the direction I wanted to go, and I think we may want to ask your advice further on that area. I would like instead, because of the time restraints, to go to what we were trying to come to grips with this morning; namely, subsection 12(2). The key word in subsection 12(2) is "may." Of course, the opposite then is also implied--"may not." I am wondering if you can give us an example of where the "may not" would apply and then give us an example of where the "may" would apply.

Hon. Mr. Aird: So "may" or "may not" is the question?

Mr. Philip: Yes, give me a "may not" and give me a "may" so that I can contrast the two.

Hon. Mr. Aird: I do not think we have an example.

Mr. Philip: The example that I think the Attorney General (Mr. Scott) gave this morning--I do not whether the Attorney General or myself who gave it but we were talking about it anyway--was that obviously if your spouse is a doctor, she would not list all of her patients. I am sure you would probably agree that that would be a "may." You may give an exemption. I guess my question then is, supposing that my spouse is a doctor but her clients consist of two insurance companies: is that a "may not"?

Hon. Mr. Aird: In the real world, I think that should be disclosed.

Mr. Philip: It should be disclosed?

Hon. Mr. Aird: I think so.

Mr. Philip: Particularly if I am the Minister of Consumer and Commercial Relations.

Hon. Mr. Aird: Yes.

Mr. Philip: So the onus would be on the spouse or on the minister with the assistance of the spouse to at least disclose to the commissioner the type of clientele and then the commissioner would decide whether or not disclosure of the clients was required or not.

Hon. Mr. Aird: "Tell me what your practice is about, Doctor." That would be the question I would ask.

Mr. Philip: In your experience of interviewing cabinet ministers and members of the government side of the House, that is a question you have been asking at the present time?

Hon. Mr. Aird: Yes, sir.

Mr. Philip: OK. That leads me to a question which you may or may not wish to answer, and if you do not, I will understand. My experience around here is that certain parliamentary assistants from time to time actually act in certain ministries as what I would call unpaid cabinet ministers or not fully paid cabinet ministers. I can think of Mr. Rotenberg when he served as parliamentary assistant to the Minister of Municipal Affairs and Housing and in fact handled the whole municipal portfolio. Under the bill, a parliamentary assistant is treated similarly to an MPP. Is it your feeling that there is any distinction between a parliamentary assistant and an MPP? Should we be looking at that difference?

Hon. Mr. Aird: There is no doubt, at least in my view, that the intent of the legislation was to put a higher degree of duty upon the cabinet minister. That certainly was the intent of the legislation. As to the practicality of that situation, I think that is a subject for a debate, and whether or not the PA should be under exactly the same jurisdiction as the cabinet minister I think is a debatable point. Certainly, they are privy to the same information and yes, many of them do, depending on their degrees of skill and expertise, give that advice.

What I became concerned about, on the flip side of that, is that I understand that a number of people have turned down becoming parliamentary assistants--this came to me via the grapevine, not via any PA--because they

did not wish to make this full disclosure. That is on the flip side. So I think it is an area that deserves discussion.

Mr. Philip: Let me give you an example. I would prefer to try to think in the concrete of how this would work out. I am not saying anything about Mr. Rotenberg because I do not know what business he is in now and I have not seen him since he left here. Supposing Mr. Rotenberg, having handled all of that very complicated municipal side of the Municipal Affairs and Housing ministry, under this bill he could have appeared, if he were a lawyer, before the Ontario Municipal Board immediately after being what amounted to the de facto minister of municipalities.

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Hon. Mr. Aird: Without having given it a great deal of consideration, but from listening--

Mr. Philip: You could do the same thing with the Ontario Highway Transport Board or something like that.

Hon. Mr. Aird: Yes. Having sat through all these interviews, I really have no trouble with the same degree of disclosure being imposed upon parliamentary assistants; none whatsoever.

Mr. Polsinelli: I have a supplementary arising from Mr. Philip's question, the example he chose with respect to subsection 12(2) where he said if the spouse of a member is a doctor, then you may not release the disclosure of who the patients of the spouse are, or you may, depending on the circumstances.

I believe the example was that if the clients or the patients are two insurance companies, then you would release that.

Hon. Mr. Aird: Sure.

Mr. Polsinelli: That also implies that you would want the spouse who is a medical practitioner to disclose to you who the patients are.

Mr. Philip: Or describe them.

Hon. Mr. Aird: There is such a gamut. I mean, it is a big range. When you are sitting down across a desk, as we did with you and others, there is no problem in asking that question.

Mr. Polsinelli: No, but is there an obligation under the legislation for the spouse to disclose to you who the patients are? That is my question. If there is an obligation under the legislation for the spouse to disclose and you have the discretion as to whether or not to release that information, is there an inference, or perhaps is it more than an inference, that if a member is a medical practitioner or a psychiatrist and that member was carrying on the practice of medicine on a part-time basis, there would be an obligation on that member to disclose to you who his patients are, in which case you would have no discretion but to release who the member's patients are?

Hon. Mr. Aird: I really have not thought about it, but I will be very glad to think about it some more and give you a definitive answer. My experience truly has been a very rewarding and good one, in spite of what everyone may or may not think about the amount of disclosure that we have received. What you are asking is whether or not I have to do so.

Mr. Polsinelli: Exactly. My concern also ties into the previous question I asked, where the example I chose to use was a lawyer who had a minority partnership interest in a large law firm. If the obligation in this situation would arise for a member who was a doctor to disclose who his patients are, would the same obligation arise for a lawyer who has a minority interest in a large law firm to disclose all the clients of that law firm, be there 80,000, 100,000 or 200,000 clients? Would you have the discretion, first, not to obtain that information? Second, if you did not have the discretion not to obtain that information, would you have the discretion not to release it?

Hon. Mr. Aird: I remember when you came and appeared before us, a tougher question you asked me was whether or not I had the power to force divestment.

Mr. Polsinelli: That was one of the items we discussed, yes.

Hon. Mr. Aird: That was the first one. I think this is an equally tough one you are asking now, because I think the professional people who enter the cabinet or who are members of the assembly have a tougher time under this legislation than others. I really do believe that.

Mr. Polsinelli: I would appreciate some further thought on that matter if you could supply it, not just relating to professionals. But if it did apply to professionals, what would prevent it from applying to partnerships, any type of partnerships where client lists would have to exist? It goes back again to the idea of what a source of income is.

Hon. Mr. Aird: I do not want to give you a glib answer. I would like to think about that.

Mr. Polsinelli: No, I agree. I am consenting to that, but I am just saying, in your deliberations, perhaps you could extend it past the point where you are looking only at the professional relationship but also to the relationships where partnerships are involved and the clients of a particular partnership, the people that partnership does business with, and whether that is something the individual member or member's spouse would have to disclose to you.

Mr. Chairman: I have four people on the list here. Mr. Eves first.

Mr. Eves: Mr. Aird, I might say at the outset that I find this committee is somewhat fortunate in having a person of your stature as the acting commissioner. I hope that you can be of a great deal of assistance to this committee actually in drafting or making amendments, if necessary, to the proposed legislation.

I notice that in one response to Mr. Breaugh earlier, you indicated that you hope that the commissioner, when he or she is appointed, will have the support of, I believe in your words, 100 per cent of the members of the Ontario Legislature.

Hon. Mr. Aird: I should have probably said most.

Mr. Eves: I am just wondering if you have an opinion as to whether the commissioner, being an officer of the assembly, should be appointed or elected, if you will, or approved by the members of the Legislature.

Hon. Mr. Aird: Yes, I do, Mr. Eves. I think it is very much in the nature of an Ombudsman. I really believe that.

Mr. Eves: Would you have any difficulty with the approval rating being say in the neighbourhood of 75 per cent as opposed to 50 per cent plus one?

Hon. Mr. Aird: I do not think I should give you an opinion on that one way or the other. This is a whole new area and it is a cutting edge. It is new law and it is interesting just because of that.

But I really think the office of commissioner is a difficult one. I see by the proposed legislation it is for five years. I cannot believe anybody in his right mind would think about it; however, it does say five years. But it is not going to work unless really a large preponderance of the people in the assembly, the members, approve of the choice of the commissioner, because it is an authoritative voice--at least, I hope it will be an authoritative voice--in this very difficult area, and a great deal of discretion is required.

Mr. Eves: Another issue that I wanted to pursue is under section 11 with respect to disclosure. I wondered, seeing as how you have talked to a great many members now and spouses, if you thought there was any merit in considering the idea of a member and his or her spouse being entitled to receive independent legal advice under the legislation.

Hon. Mr. Aird: I never thought about it, but the answer right off the top of my head is yes.

Mr. Eves: If you would agree that independent legal advice may be a good thing or a worthwhile thing for a member or his or her spouse, would you think it would not be beyond the realm of possibility for the Legislature of Ontario to consider picking up the tab for that?

Hon. Mr. Aird: I certainly would. I think they should.

Mr. Eves: The next section I would like to talk to you about is--I read with interest your letter to the Clerk. On page 6 of your letter of December 10, 1987, in the second paragraph, you say, "Curiously, the bill does not expressly provide for disclosure by members of contracts or dealings that they, their spouses and their minor children may have, directly or indirectly, with ministries, agencies, boards and commissions of the provincial government."

You go on in the last sentence of that paragraph to say, "I have nevertheless insisted upon full disclosure of all such contracts and dealings and I have included disclosure of them in public statements." Do you think that perhaps the legislation could be amended to make that requirement more definitive?

Hon. Mr. Aird: The answer is clearly yes.

Mr. Sterling: Could I just ask a supplementary on that? Have you looked at section 10 of the Legislative Assembly Act in that regard? I brought this up this morning with the Attorney General (Mr. Scott). My concern is that what appears are two different acts controlling the behaviour of members in terms of what they do when they are here and which one would take precedent over the other if they conflicted, etc.

I just wondered whether you had considered that in making that particular statement when you said it. Basically, section 10 of the Legislative Assembly Act says you cannot contract with the government in person, but then there is a weird out in the next section of the act that says that if you are part of a corporation, you can contract. So all you have to do is incorporate your personal business and you are home free in terms of contracting with the government.

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Hon. Mr. Aird: Again, Mr. Sterling, in our disclosure statement, we presented this booklet to everybody, and we have a list of all the crown corporations, agencies and so on, and it is very long. We asked them to take a look at it, "together with spouse, in my presence," take it home and think about it. So I still come back with the answer I gave to Mr. Eves. The answer is yes.

Mr. Eves: The next section I want to touch on briefly is subsection 7(4), and you refer to that on page 5 of your letter. You talk about the issue of management trusts here, saying it is but one way in which a minister can comply with the requirement that he or she not carry on a business, including the management of personal financial interests. You go on to say, "However, the bill does not describe any other means of compliance."

About half way down the paragraph, you then go on to say, "I have required the minister to enter into formal, documented arrangements to transfer control of the interest to a third party," and further, the last sentence: "I have accepted that he or she has complied with clause 7(1)(b) by placing the shares in a discretionary trading account with an independent investment company upon the condition that the company...exercises its discretion without control by the minister."

My question there is the same as the previous one I just asked you. Do you think the legislation can be strengthened or tightened up in that regard?

Hon. Mr. Aird: I go back to the original premise that you have been hearing during the course of all the questions. I come back with the feeling that the commissioner should, in effect, be the trustee, and I think that eliminates a whole lot of the worry or concern one has about management trusts per se. None the less, that is not the way this legislation is set up.

What worried me as I talked to the various cabinet ministers and members of the assembly was, how do I decide what is at arm's length? How do I decide whether or not this is a fitting person to do this? Should there be one, should there be two, should there be three? Should there be somebody familiar with the affairs of whatever is an ongoing business?

This is an area this committee should give a lot of consideration to, because I think it is something that should be tightened up. I do not have any particular suggestions relating to it, but I do know it is an area that gave me a lot of concern. I worried about it.

Mr. Eves: Thank you. The last two points I just want to briefly touch on are ones you have already dealt with really in response to other committee members so I will not endeavour to take up much of the committee's time on them. I just want to make sure I understand that you have indicated that Mr. Sterling's idea of disclosure of assets of a holding company may, in fact, be a reasonable and good idea and one the committee should look at.

Also, with respect to divestment, I get the strong impression you feel that under some circumstances that is almost essential. I reiterate the request of my colleague the member for Yorkview (Mr. Polsinelli) that you consider that and endeavour to get back to the committee with some suggestion as to in what cases divestment, in your opinion, would be necessary and proper.

Hon. Mr. Aird: I would be glad to do that.

Mr. McClelland: We have touched on the major thrust of what I wanted to discuss, perhaps at length and numerous times, and that was dealing with the relevance of disclosure. One other point I want to touch on was something you had indicated at the outset was some concern you had with respect to the construction of the management trust and how that is set up. I wonder whether, for members of the committee, you could just shed some light on this and give some of your thoughts and concerns with respect to the legislation as drafted and some alternatives you had considered or contemplated at some other point in time.

Hon. Mr. Aird: I guess I will answer the question the same way I answered Mr. Eves's question. My starting point is different. I think the whole business of trusts should have been put in the hands of the commissioner or his nominee because the business of blind trusts or any kind of trusts is difficult to handle. I start from a somewhat polemic position. Having said that, I come down to having to deal with the legislation that is in place, and I am not sure that it would not be a good idea to not limit it to one or maybe it should be two or three. We have thought about this a good deal.

Someone, for example, who is familiar with an ongoing business perhaps should be a trustee. Perhaps it should be a lawyer, a professional man. Perhaps it should be a doctor. Perhaps it should be somebody of recognized stature. But for me to sit around and judge the integrity of a proposed nominee, I found difficult because once again you are into a subjective judgement as to whether Smith is good or Jones is not. That is tough. Mr. Bennett has an addition to this because we have talked about this a lot.

Mr. McClelland: On the other hand, I suppose, the flip side of it is that the office of commissioner--you see no problems or difficulty with that office acting in the role of trustee or management trustee?

Hon. Mr. Aird: Not necessarily alone.

Mr. McClelland: I can see that would potentially create a whole other set of problems vis-à-vis the commissioner's other responsibilities.

Hon. Mr. Aird: Let me tell you that the one thing it creates is a very large empire. That is what it does create and maybe you do not need another empire.

Mr. McClelland: (Inaudible) with you; no pun intended. It creates a conflict, in a sense, within the very office itself. I can see that there would be all kinds of difficulties and I would be interested in hearing your comments on that.

Mr. Bennett: I guess our initial problem was the fact that the language, as it is drafted in subsection 7(4), is permissive. It says, "If a member of the executive council complies with clause (1)(b) by entrusting his or her business or the management of his or her personal financial interests to" a trust, then such and such. What that implies is that there is another

way of complying with the requirement that you not carry on business or manage your personal financial interests..

Hon. Mr. Aird: Because of the "if."

Mr. Bennett: That is right, because of the "if." That confronted us with trying to figure out what the intention was with respect to alternatives, sort of what kind of proposals you were going to entertain. One of the problems with the bill, I think it is fair to say, is that this creation of an area of what appears to be a large area of discretion in the commissioner is difficult. You could think of a variety of things that could be done. A member of the executive council could succinctly say, "I give you my solemn undertaking that I won't carry on business," and you could say, "That's good enough; you don't have to have a trust." It seems like a peculiar result in the absence of explicit language in the bill saying that this is all right.

We were put in the position of saying, "All right, management trusts for everybody." Then you look at the problem of management trusts. What is happening is that the accounting firms that have been the traditional repository of these trusts are becoming a little gun-shy from their experience and they would like an arm and a leg and another arm to hold one of these trusts and to deal with it. It becomes very difficult for the member also.

Hon. Mr. Aird: It becomes very expensive.

Mr. Bennett: In some cases it becomes pretty silly, given the nature of the asset. Specific reference was made in Mr. Aird's letter to family farms where you have a family farm corporation, which is a normal kind of arrangement for a family farm. But in the absence of clearer indication in the bill what the alternatives to a management trust were, Mr. Aird required everybody who had that kind of interest, an interest in a company, to put it in a management trust.

Then the next issue was, who do you have as trustees, if you could find some volunteers. What you have done is put a level of bureaucracy in there which then communicates with Mr. Aird. You have an increased paper flow back and forth, and it is volumes. It is an area of the bill which requires some consideration, I think it is fair to say, in my reluctant view.

Hon. Mr. Aird: I would really like to see it addressed.

Mr. Polsinelli: Mr. Aird, I do not know whether you are aware of it, but the Attorney General has proposed some amendments to the bill.

Hon. Mr. Aird: No, I am not.

Mr. Polsinelli: One of the amendments he has proposed is that in clause 7(1)(b), the words "including the management of personal financial interests" be deleted.

Hon. Mr. Aird: Deleted?

Mr. Polsinelli: Yes.

Hon. Mr. Aird: Clause 7(1)(b)?

Mr. Polsinelli: Yes. That would read, "A member of the executive council shall not carry on a business," I believe.

Hon. Mr. Aird: I agree with deleting it.

Mr. Polsinelli: You agree with the deletion?

Hon. Mr. Aird: I do.

Mr. Polsinelli: Would that impact on your belief that the commissioner should be the trustee? Would that change that at all?

Hon. Mr. Aird: No.

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Mr. Polsinelli: I have difficulty in accepting your belief that the commissioner should be the trustee.

Hon. Mr. Aird: Or his nominee.

Mr. Polsinelli: Or his nominee. Would that not place perhaps quite an onus, an obligation, on the commissioner to ensure that the trustee effectively carries out the business in such a fashion that it does not lose money? What type of obligations would that place on him?

Hon. Mr. Aird: If you decide to go that route--and I do not think you are going to decide to go that route generally--then you are creating another bureaucracy, a large one.

Mr. Polsinelli: If this committee decides not to go that route, would your responsibility not be a relatively simple one by ensuring that the trustee is at arm's length and that the terms of the trust are such that they comply with the legislation? I do not think there is any onus on you under the legislation to ensure that the trustee who manages the business is competent, that he is capable, but rather that he is at arm's length and that the terms of the trust agreement are such that they comply with the legislation.

Hon. Mr. Aird: I know you are a good lawyer, and I would be very glad to have your definition of arm's length.

Mr. Polsinelli: It is something that we think about. Is that your only concern?

Hon. Mr. Aird: No, no.

Mr. Polsinelli: Is it your only concern under the management arrangements that the term arm's length be defined, in terms of the other obligations?

Hon. Mr. Aird: No, the other concern was choosing. How do you decide?

Mr. Polsinelli: Let us say the committee decides to proceed with the legislation as drafted, other than the amendments the Attorney General has submitted.

Hon. Mr. Aird: Is this the sole amendment?

Mr. Polsinelli: There are others. There is a whole package of amendments that he has proposed. I am sure we can get the clerk--

Hon. Mr. Aird: Relevant to your questions?

Mr. Polsinelli: Relevant to that one, I believe, is that amendment. There is an amendment to subsection 7(4) which strikes out "or the management of his or her personal financial interests."

Perhaps we could obtain a package, Mr. Chairman. There is an amendment to subsection 7(5).

Hon. Mr. Aird: We would be glad to take it away with us.

Mr. Polsinelli: I guess my point quite simply is that your concerns are more related to determining what an arm's-length relationship is?

Hon. Mr. Aird: No. It related to a discretionary choice as to the desirability of the trustee or trustees.

Mr. Polsinelli: But do you have a discretion under the legislation?

Hon. Mr. Aird: Yes, we do.

Mr. Polsinelli: So you are approving the agreement under certain conditions and your conditions are set out under 7(4)(a), (b), (c) and (d). Once those conditions are met, do you still have a discretion?

Hon. Mr. Aird: No.

Mr. Polsinelli: So the question really is defining what those conditions are under (a), (b), (c) and (d). In defining what those conditions are, you obviously have a problem with determining what an arm's-length relationship is.

What other areas in those subsections do you have difficulty with?

The question is, your discretion is exercised by ensuring that clauses 7(4)(a), (b), (c) and (d) are fulfilled or complied with. Once those four conditions have been complied with, then you no longer have a discretion.

Hon. Mr. Aird: Correct.

Mr. Polsinelli: In terms of (a), (b), (c) and (d), you have indicated that you have difficulty in determining what an arm's-length relationship is, and I can accept your difficulty there. Which other of those subsections do you have difficulty with?

Hon. Mr. Aird: I guess it is in (b), "and approved by the commissioner."

Mr. Chairman: Can I just ask the parliamentary assistant to the Attorney General to make a clarification, which he would like to do at this time?

Mr. Offer: Thank you, Mr. Chairman. Just as a point of information, this morning when the Attorney General was discussing these potential amendments, he did indicate that they were to be used for the purpose of discussion today. The notes and the discussion papers surrounding the amendments are part of the package, but the Attorney General did not indicate they would be moved by the government as amendments but rather would serve as

a centre for discussion so that we could possibly achieve a consensus on this section.

I do not want the impression to be that these amendments have been moved or are to be moved by the government.

Mr. Chairman: It is 4:35 p.m. I am trying to get a handle on how long you want to stay today, whether you want to cut this off at five o'clock or keep going until everybody is finished. If that is the case, we will try to shorten the length of time each person has to ask questions.

Hon. Mr. Aird: I am in your hands, Mr. Chairman.

Mr. Polsinelli: There were a number of issues raised today that Mr. Aird is going to be giving further thought to. I was wondering whether he would be prepared to come back at some future point.

Hon. Mr. Aird: The answer is yes. I would be prepared to come back, but I think I would like to come back in written form.

Mr. Polsinelli: That would be fine.

Mr. Chairman: To write out answers to the questions that have been posed today?

Hon. Mr. Aird: Yes.

Mr. Chairman: Maybe we can finish the questioning today. I have Mr. Sterling and Mrs. Sullivan, who have supplementaries to Mr. McClelland's original question. Then I have Mr. Sterling, Mrs. Sullivan and Mr. Philip, who have other questions. If you want to keep them short, we can probably finish everything today.

Mr. Sterling: I am not asking any supplementary question. I have three or four areas that I want to raise, but I would point out that my colleague and I from our party have used up about only five or six minutes of this witness. We were very brief. I would hope that would be taken into consideration in my allowance of time to ask a number of questions.

Mr. Chairman: Everyone knows what kind of time we are working under. Mrs. Sullivan, you have a supplementary, and then Mr. Sterling.

Mrs. Sullivan: I wanted to pursue further your insights into the management trust situation. First, one of the things that struck me in reading this and in reviewing the proposed bill is that the discussion of the management trust tends so far to relate really to professions.

I was thinking of the minister who has come into government from the corporate world, in corporate ownership and in corporate management, combining both ownership and management. I would be interested in knowing if this is the sort of thing you were faced with in working with the ministers when they were doing their reports. Where does the trustee fit in, in that situation? Does the trustee become the manager of the equity ownership in the corporation or does the trustee come in as the professional manager of the corporation? How was that distinction made? Are there indeed two steps there?

Second, who pays if a professional manager or a professional trustee is brought in?

Hon. Mr. Aird: Taking it in reverse order, my understanding is that the government does not pay. It is a personal expenditure.

With regard to the first part of your question, which is, of course, the important part of it unless you have to pay that last bill, the decision-making function is the key as far as I was concerned. I do not differentiate between a discretionary account with a large financial house as long as the person putting the funds or the management or whatever into that discretionary account--that is what happens, it is a total discretionary account. That is the way we have gone on it. Equally, on the management side, the same thing.

Mrs. Sullivan: Say the business was not a financial business. Say it was a manufacturer of widgets.

Hon. Mr. Aird: The answer is pretty well the same. That is part of the problem I have been trying to put an umbrella around for you; it is not easy for someone who makes widgets, who has made widgets all of his or her life, all of a sudden to not be in that business any more and to give it away to a commissioner. It is not easy. That is why I would like the committee to think about one, two or three trustees in a situation of that nature.

1640

I think it would be very important. If I was a maker of widgets and if I was about to go into cabinet, I would like to have somebody around to do something about my business, besides a commissioner sitting on a Bay St. law firm.

Mr. Spence: Can I just respond to this? All the trustee can get is, he holds property, ownership in trust. The trust situations are all ownership of property; they are not management or carrying on business trusts.

For example, if the minister held 100 per cent of the equity shares, the trustee would get transferred to him or her all of those rights of ownership. Those rights may involve, in due course, voting in a board of directors and the directors appoint managers and so on, but those are rights that flow from ownership. If it is only a 10 per cent holding, maybe there is no flow-through right that could in fact be exercised. But that is where the trustee gets the ownership.

Mrs. Sullivan: OK. That is what I wanted to know.

Mr. Sterling: Mr. Aird, I received your letter with regard to the decision where I asked your opinion with regard to the Attorney General's conflict of interest. I thank you for your speedy action on that particular matter, which was filed with the Clerk, according to the Speaker.

One of the things that it does point out to me is the inadequacy of this legislation in dealing with what is a conflict and what is not a conflict. In my view, the bill has been set up in such a manner that it is going to be pretty hard for you ever to adjudge that there is a conflict unless you get somebody with his hands right in the cookie jar, so to speak.

It is a pretty confined and technical description of conflict under section 2 of the act. What I have a concern about is that I do not think that the public would view that definition as wide enough in terms of how they view their approval for politicians acting in a particular manner.

I read Mr. Justice Parker's report. In dealing with conflict of interest, as he does, he deals with it in two ways. He takes the definition of section 2 and deals with somebody who knowingly makes a decision where there is an opportunity to further his or her private interest. But he also deals with another area, which I think is extremely important in some of the decisions we make around here; it is what he calls an apparent conflict of interest. He says, "An apparent conflict of interest exists where there is reasonable apprehension which reasonably well informed persons could properly have that a conflict of interest exists."

When he sums up in his report and makes general recommendations, he makes eight recommendations. He says, "The legislation should make clear that even with disclosure and divestment"--he recommends divestment in his particular recommendations--"the public office holder would have a continuing obligation to anticipate any remaining areas of potential conflict and to recuse"--that is to withdraw--"when problems arise."

My problem is that when the Attorney General this morning was explaining about conflict and the rest of it, and having acted in all of the different categories of legislative office here over the past 10 years, what has not been brought to the fore is the different categories of decision that you make as a cabinet minister. One of the ones, the one I dealt with in your decision, was the position that a cabinet minister puts himself in, acting as an appeal court judge almost, and acting as an appeal court judge in a private circumstance, in camera, so that there already is a suspicion that surrounds the process by the public. I think I indicated this morning, when you were not here, my concern is that in our party we would be trying to move to a wider definition of conflict of interest.

I do not know if you wanted to comment on that at all or what you feel in terms of that whole area, but we are going to have, probably on Wednesday, Judith Hunter, who is from the Bridlewood community, come and explain her concern over Mr. Scott's involvement in this particular decision.

Hon. Mr. Aird: How did the Attorney General react to your suggestion of the widening of the conflict of interest?

Mr. Sterling: He did not react. I think it is a difficult one, because what you are then dealing with is the perception of the public. One of the problems is that on this kind of decision we are dealing with in terms of the Bridlewood community we are dealing with a situation where you again have the cabinet, or even a small group of cabinet, sitting in a legislative committee of cabinet making a decision in camera and having to appear as if justice is being done. That is the problem my constituents have had with this particular situation. I do not know whether you can give an answer to it. If you can, I would appreciate it.

My second point is this: What is your understanding of your access to records and to documents under this act? I ask that in context with the particular question I asked and what the Honourable Mr. Justice Parker has put in his report, which I think is a failing part of this piece of legislation, and that is the recusal registry: Do you have access, for instance, to minutes of cabinet meetings, minutes of committee of cabinet meetings or whatever as a matter of right under the act?

Hon. Mr. Aird: I do not know whether it is a matter of right or not. I never felt any limitation.

Mr. Sterling: No? That may be fine and dandy today. We are not talking about a situation--

Hon. Mr. Aird: I know, but you are asking me.

Mr. Sterling: Yes. I guess what I am asking is, under the act, do you have a right to cabinet records?

Mr. Spence: As I understand it, looking at it as a legal matter, as a question of right he can be constituted and he has whatever rights there are under the Public Inquiries Act. There would be no higher right there in the commissioner than somebody who was constituted under the Public Inquiries Act. I do not know how far that takes you, Mr. Sterling. As I understand the legislation, there is nothing in this bill which says that all government documents, regardless of type, have to be given to the commissioner if asked.

Mr. Sterling: So if there were a conflict between the commissioner and the cabinet or the cabinet minister, they could, in effect, block his efforts in terms of an investigation with regard to whether or not a conflict had occurred.

Mr. Spence: Again, if the inquiry arises upon a written request being made to the commissioner, as I understand the act, that can then become constituted as an inquiry. If the inquiry necessitated, in the commissioner's view, the production of documents--you are assuming that the government would not give these documents, for whatever reason--it could probably be phrased as a legal question as to whether or not that was a relevant document that was properly subject to being produced under the Public Inquiries Act.

The court may have to make a decision on that. I think it would be dependent upon the constitution of the question and the commissioner's reply.

1650

Mr. Chairman: Mr. Cordiano has a short supplementary.

Mr. Cordiano: A very brief one. Given the context of the new legislation--

Mr. Chairman: Speak up, Mr. Cordiano. We cannot hear you.

Mr. Cordiano: Given the new legislation, I am just wondering how far we have come with this legislation when we reference it back to the old guidelines. Is it substantially different in the sense that in the past there was no requirement for that to occur? There was not even a question about that.

Hon. Mr. Aird: No.

Mr. Cordiano: Given the fact that we have disclosed many of our personal holdings and potential areas of conflict, have we come further along the road, or really are we back to where we started?

Hon. Mr. Aird: I happen to think we have come quite a way down the road. Number one, it is legislation and, number two, there is full disclosure, or as full--there is a difference of opinion as to whether it is enough, but I think we have come a long way down the road.

Let us come back to the question. I hesitate to put myself in this position, but I think if any commissioner worth his salt or her salt wished to get a document and could not get it, that would be a very sad situation.

Mr. Sterling: That is precisely where a government might want to have you in a political sense, as well.

Hon. Mr. Aird: I do not know.

Mr. Sterling: I am not talking about John Black Aird. I am talking about five, 10, 20 years from now, or whenever.

Hon. Mr. Aird: Well, take a retired Supreme Court judge.

Mr. Sterling: The other situation that arose in the particular matter that I brought forward, and as a recommendation of Judge Parker, is that there would be a recusal registry, in other words, a registry of when ministers withdraw. I assume they would give a particular reasoning for the withdrawal from cabinet discussions. Otherwise, there is no way that the public has any idea whether a minister has sensed that there is a potential conflict. I just wondered if you had any comments on that.

Hon. Mr. Aird: Yes, I do. The comment is that if nothing else comes out of this entire exercise--and I hope something very solid does come out of it--the tightening up cabinet procedures will certainly occur as to both attendance and withdrawal and the reason for withdrawal.

Once again, I do not have the advantage of ever having been to a cabinet meeting, as you have. I am not familiar with that, but I would think in the event of a withdrawal, there certainly should be a valid reason for it, or if someone refrains from voting, it must be for a valid reason, and that should be disclosed, whether they are there, whether they withdraw, whatever happens.

Mr. Sterling: Do you believe that should be a public record?

Hon. Mr. Aird: I think it should be available to the public.

Mr. Sterling: So it should be a public record.

Hon. Mr. Aird: Sure.

Mr. Sterling: It is interesting to note that in terms of a specific case with which we dealt with Mr. Scott, where I asked the particular questions, if Bill 1 had perhaps been in place as it is now proposed--and, as I said before, I do not agree with the definition of conflict--and a recusal registry had been in place and if Mr. Scott had given notice or the recusal registry had registered his withdrawal from the first cabinet meeting on this particular subject--which he did--and then had given his technical reasons for re-entering the cabinet discussions at a later date, I might not have made the charge, because then I could have considered his arguments as to why he was or was not involved.

By his very withdrawal from the first cabinet meeting, because of a potential conflict of interest, in my view, he saw that the public might perceive that it was a conflict of interest. That is where I think he made a mistake in going back in. Under Judge Parker's particular situation, he would have said: "There is a reasonable person with a reasonable knowledge. We have come to the conclusion that the Attorney General lacked objectivity in this

particular matter." That is the problem I have with the definition of "conflict," and that is why I think a recusal registry is a very important part of the legislation. It is presently lacking.

I think there also should be some right to some kind of records in terms of cabinet records, be it cabinet meetings, or if there is not a recusal registry, at least the commissioner should have the right in terms of dealing with withdrawals by cabinet ministers so that somebody has knowledge of this particular matter. I would prefer that they be public records rather than anything else.

I do not know if I have any other questions of you at this time. I was interested in your response to my colleague. The reason he put forward 75 per cent was that would assume, therefore, you needed some opposition approval. Notwithstanding your tremendous reputation and whatever, I would like to have some kind of high figure like that for approval and dismissal, because if a commissioner became troublesome to a future government somewhere along the road, it might not want him around as long.

Hon. Mr. Aird: Once again, I think it goes back to the assembly. I agree.

Mr. Sterling: I have trouble. Because most of our governments are majority governments, that 50 per cent plus one may not be enough.

Mrs. Sullivan: I am going to go on a totally different tack. I want to thank you, Mr. Aird, for your work on the bill, in the development of the bill and in the work so far with members of cabinet and caucus who have been reached to date.

One of the things I think I wrote to you very early on relating to this bill was about the role of spouses. It seems to me that a member requires a special kind of spouse who is interested and willing to make this kind of disclosure to the public of his or her private, personal and business affairs. Certainly, one of my concerns in the very early discussion and drafting stages was whether the responsibilities that were placed on the spouse would dissuade people from seeking public office. I wonder if you have any comments on that, if any of that has reached your ears.

Second, it is quite conceivable that a spouse could say, "No, it is none of your business." I wonder if you have come across that kind of situation. Is there any special advice you have for spouses in this conflict bill situation?

Hon. Mr. Aird: Having been a spouse for 43 years, let me tell you that all of us need special spouses, every one of us. That is my sort of generic answer to your first question. I do think it requires a special kind of spouse; sure, I do. I agree with the point you make.

I do not suppose anything at one of these committee meetings is off the record, but we had a couple of people we interviewed, not to be identified, who totally denied that they were spouses and said, "No, I am not a spouse; I am a good companion." I had to sort of pause and think that one out a little bit and ended up thinking it did not matter a great deal.

I think this whole area, to be honest with you, is in a very early stage of development. Many families today are dual-income families. If you have to go home and say to your spouse, "Look, I would like you now to tell me how many shares of Imperial Oil you have and what you have done with our

registered retirement savings plan," and he or she says, "Forget about it; we are not going to do that," I understand the problem. But it is there and it has to be dealt with, and we will deal with it just as best we can from situation to situation. I do not think it is even yet.

This is also something that may appeal to you, because I think perhaps it was part of the genesis of your inquiry to me in the first place. I think it is tougher for a female cabinet minister than it is for a male cabinet minister. I do not think there is any doubt about it. I am not saying that I am engaged in making that playing field even at all, but I think we may be getting there a little bit with this kind of legislation.

1700

Mr. Philip: I have a couple of questions and maybe you will help me understand how this would work.

In your report of July 2, 1986, you make a recommendation that the Provincial Auditor in the auditor's report should provide a list of all financial transactions between the government and ministers and their spouses having blind trusts. We are not dealing with blind trusts in this bill, but there is subsection 7(4) which states "If a member of the executive council complies with clause (1)(b) by entrusting his or her business or the management of his or her personal financial interests to one or more trustees..." and then it goes down to list how you can require this.

Hon. Mr. Aird: Yes.

Mr. Philip: Are you still of the opinion that there is any action needed in the form of disclosure by the Provincial Auditor that would take place when section 7, as the new bill, would come into force? In other words, where you have ordered a trustee to be appointed, would there be a requirement similar to your recommendation on a blind trust by the Provincial Auditor, or is that no longer operative?

Hon. Mr. Aird: The straight answer is that I have not contemplated the question. I really have not thought about that. My presumption is that my original opinion was perhaps not a bad one, but I would like to think about it.

Mr. Philip: I wonder if you would be kind enough to think about it--

Hon. Mr. Aird: Yes, I would.

Mr. Philip: --and see whether the principle is still applicable even though the context may be different. If that is the case, I suspect there will be a requirement of a change in the Audit Act or some directions that under the Audit Act any minister can require or ask a certain service of the Provincial Auditor. It may be possible to change this act by simply saying that the Attorney General will on a yearly basis request of the Provincial Auditor that such a thing be done. It is something you might want to look at.

Hon. Mr. Aird: I have not addressed it, but it makes sense.

Mr. Philip: One of the things we were groping with when we did the public accounts inquiry was the concept of apparent conflict of interest versus real conflict. There is no mention in this bill of apparent conflict, but if you look at the definition in the Parker commission report, he says, "A real conflict of interest denotes a situation in which a minister of the crown

has knowledge of a private economic interest but is sufficient to influence the exercise of his or her public duties and responsibilities."

The definition here of conflict is "...a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is an opportunity to further his or her private interest."

Am I correct in saying that the definition in the bill, by using the word "opportunity," would be a broader definition than Parker's definition of conflict of interest?

Hon. Mr. Aird: It would seem that way to me. What you are talking about is anticipation.

Mr. Philip: You even might substitute the word "belief" that there might.

I guess what I have trouble with then is, in different guidelines, including the federal guidelines, they deal with the concept of apparent conflict of interest. In other words, it is not just necessary that there be knowledge that one can benefit, there is not even necessarily the opportunity that one can benefit; it goes farther than that and says, "Well, if it might appear to a reasonable person that there is a conflict, then there is a conflict."

My understanding then would be that the definition in the bill comes somewhere between the two definitions in the Parker report. In other words, it is less inclusive than the two definitions together but more inclusive than the first definitions.

As the person who has responsibility for interviewing these people, when you sit down to deal with that, do you deal with apparent conflict of interest or simply the conflict of interest that is defined in the bill?

Hon. Mr. Aird: Would you like to know the question I ask them?

Mr. Philip: I would like to know, if somewhere down the road someone is accused of a conflict of interest, exactly what touchstone is then going to be used. Is it exclusively section 2 or is it--

Hon. Mr. Aird: First, there are a number of questions that we ask routinely. I put the proposition to everyone who came to see me, including all the spouses, that in my lifetime--and thank you for referring to somewhat lengthy experience in this field--if it occurs to you that you have a conflict of interest in any regard, you have one.

Mr. Philip: That is slightly different from what an apparent conflict of interest would be, because--

Hon. Mr. Aird: No, with respect, sir, it is not.

Mr. Philip: It seems to me that the definition of an apparent conflict of interest, as defined all the way back to Mike Pearson when he was Prime Minister, is what the other person reasonably might think, not what you personally might think. Are you making a distinction between--

Hon. Mr. Aird: No, I am not making a distinction.

Mr. Philip: You are saying they are both the same.

Hon. Mr. Aird: I am saying they are both the same.

Mr. Philip: Therefore, under this bill, is it your opinion that apparent conflict of interest, as dealt with by the federal guidelines and as defined by Parker, is in fact included in the definition under section 2?

Hon. Mr. Aird: My reaction is yes, but I had better ask my two legal colleagues what they think about it.

Mr. Spence: As I see it, the commissioner would be bound by the definition given in the act. If the definition is left as drafted in section 2 and I were to advise a commissioner who was making a decision, he would be under an obligation to use that definition.

To answer your question, Mr. Philip, as I read that definition, it involves personal knowledge--"knows"--on the part of the person who is under scrutiny.

Mr. Philip: Then am I correct in saying that under this bill, some of the conflicts Justice Parker applied to the particular cabinet minister might not apply in a situation involving one of our cabinet ministers?

Mr. Spence: Can I answer it indirectly? I will not make any comment on the Stevens inquiry, but I think I will answer your question by saying it this way: If for whatever reason there is somebody who is under scrutiny and after extensive inquiry a commissioner truly believes that it never occurred to that person that he or she had a conflict, so the knowledge was absent, it seems to me at least open that a commissioner might nevertheless say: "That person is pretty thick. It ought to have occurred to that person as a reasonable bystander; that person should have known." If that is the case, if you have the situation with the second case, as I understand the act, it would not be covered. It would not fall into the definition in section 2.

1710

Mr. Philip: So the conclusion of the commissioner in a case like that might be--and let me use layman's language, because I am not a lawyer--that you were not in conflict but you were really dumb not to understand that you might have been in conflict, and you should have done something.

Mr. Spence: The commissioner may say you do not fall within section 2, but it would be up to the commissioner to say whether he or she thought a comment was nevertheless needed. That would be up to the commissioner.

Mr. Philip: Therefore, the end result of that might well be that the person might suffer a political embarrassment but not necessarily be covered by the penalties in the bill.

Mr. Spence: I think that is fair.

Mr. Philip: The other question I had is--and Mr. Sterling and I were talking about it in a different way this morning--knowing how decisions are made on a long-term basis, is it possible that somewhere down the road it

might well be that a cabinet minister might have been in conflict and you do not realize it until after the person is no longer in the cabinet?

In the different remedies, there are remedies that say "that the member pay compensation in respect of damage suffered by another person as a result of the member's contravention, in such amount as specified by the commissioner." Would that take into account your ability to order an ex-cabinet minister, where an obvious conflict had resulted to a person or to the public Treasury, to repay damages for the conflict that existed in history?

Hon. Mr. Aird: That does not address the problem.

Mr. Philip: That does not address the problem.

Hon. Mr. Aird: The reply is not addressed.

Mr. Philip: I am wondering if it is something that should be looked at, considering that certain types of things in terms of government are fairly long term? He might not know that decisions were made five years ago to build a certain road or do a certain project. It gets built 10 years from now as a result of a decision made five years back from now. If there was, in fact, a conflict, how does the Treasury recoup any great financial gains that there might have been in the conflict of an ex-cabinet minister when he served as a cabinet minister?

Hon. Mr. Aird: Will you permit us to think about that one and come back?

Mr. Polsinelli: What is the obvious punishment?

Mr. Philip: Seize his properties or demand repayment.

Hon. Mr. Aird: Those are very discretionary standards that you are talking about.

Mr. Chairman: Just for clarification here on your example, Mr. Philip, with respect to a road, as I understand it, the decision may be made that some time down the road they may build a road, but until the money is actually allocated, there is no decision made to build it. There may be a recommendation, but there is no decision.

Somebody may correct me if I am wrong. You can decide whatever you want to decide, but if there is no money, you cannot make it.

Mr. Philip: But the conflict would still exist if it was the cabinet minister's recommendation that the road or the building be built. If that recommendation were later implemented, he might well have a windfall profit, even though he is no longer a cabinet minister, even though he is no longer a member. He may have initiated the original thrust that eventually put a lot of money in his pocket. All I am asking is, are there ways of recouping, at least for the public purse, any conflicts that may be found at a later date?

Mrs. LeBourdais: Both this afternoon and this morning, most of our discussion has concentrated on basically two terms: "spouse," broadly defined, and "business," also broadly defined. I am not intimately informed of all the details of the Sinclair Stevens inquiry, but one of the main things that did come up was that in fact there was even some questioning to some degree why Mrs. Stevens was not as informed as one would assume a spouse would be about

certain information. Is it not possible that one's closest confidant of business affairs may not necessarily always be one's spouse or even someone with whom one does business, but rather a close friend or whatever?

Also, in the area of business, one assumes business to be defined to some degree as that which makes money. Again, in that same inquiry, one area that had the potential to make money was considered a hobby by that family rather than a business. One could have a hobby that potentially could be a business but in a particular family might be simply a hobby, whether it be the collection of art or some other hobby that had the potential to go into dollars.

Are we perhaps looking too narrowly in those two areas of defining business and spouse when a lot of what we are talking about could be applicable in those other areas as well?

Hon. Mr. Aird: Let me once again answer in reverse order.

Mrs. LeBourdais: Okay.

Hon. Mr. Aird: One, you are the first person who has mentioned the word "hobby" to me or I think--I do not recall it at all. I certainly do think that what you have just said makes very good sense because I think that happens very often. With regard to your first point, of course we are not prepared to make any comment on the Sinclair Stevens investigation.

Mrs. LeBourdais: I was not really looking for a comment on that per se. I am just opening up the idea that perhaps it is not one's spouse in some instances or in fact necessarily a business partner who could be privy to a lot of information and perhaps act as a guiding source. Yet I do not know how you would have any way of tapping that individual, that having been said.

Hon. Mr. Aird: I do not know how you would define it for one thing, but having lived this long, once again I think anything is possible on the face of this world. I hear what you say.

Mrs. LeBourdais: I just put it out for what it is worth.

Mr. Chairman: Mr. Polsinelli tells me he has a short question.

Mr. Polsinelli: Yes, I do. Mr. Aird, we are trying to take advantage of your varied experience.

Hon. Mr. Aird: I am trying to help.

Mr. Polsinelli: Basically, getting as many of your opinions as possible, I would like to get one last one for today. As I read the legislation, every member of this Legislature other than a cabinet minister, within 60 days of being elected or 60 days of this act coming into force, has to file a disclosure statement; after that, annually.

Hon. Mr. Aird: Yes.

Mr. Polsinelli: I would have thought that the legislation would have rather required an ongoing disclosure.

Hon. Mr. Aird: As far as I am concerned, it does.

Mr. Polsinelli: As I read the legislation, I do not see that.

Hon. Mr. Aird: I think it is the key. I think it is the only way to

go.

Mr. Polsinelli: As I read the legislation, a member would be in technical compliance with the legislation if he filed his disclosure statement and then updated it every year. Is that something we should look at?

Hon. Mr. Aird: Yes.

Mr. Polsinelli: Thank you.

Mr. Chairman: Mr. Aird and colleagues, I certainly appreciate your coming before the committee. I have one short question and that is, do we have a conflict in dealing with this conflict-of-interest legislation?

Hon. Mr. Aird: We sure wasted three hours, Mr. Chairman, if we have.

Mr. Chairman: Anyway, I want to thank you, Mr. Aird, Mr. Spence and Mr. Bennett. We are indeed grateful to you. I think the province is very much indebted, particularly to you, Mr. Aird, for the work you have done. Certainly, a man of your stature does not come easily and we are fortunate to have someone like you to take this very difficult position and run with it.

Hon. Mr. Aird: Let me just do a general statement at the end. Thank you very much, Mr. Chairman. I appreciate what you say. This is not an easy job. I did not volunteer for it. I think it is on the cutting edge of making some pretty good sense. I do think this kind of committee meeting is very rewarding, certainly from my point of view, because all of a sudden we have two or three new ideas from what has been presented to us.

Let me also make this point: Yes, I was Lieutenant Governor of this province and I was very proud to be Lieutenant Governor of this province. I do not wish it to be seen or perceived as an apparent conflict one way or the other that I am trading on that. I am not one little bit. I am here because I happen to think this is a pretty nice place to live. I am practising law in the city of Toronto and I come here as a private citizen. I am very relieved that nobody called me "Your Honour" this afternoon.

Mr. Philip: Mr. Chairman, I wonder if you could have our clerk contact Hansard and ask that the Instant Hansard of this get high priority. If we are going to be dealing with the amendments and with the Attorney General tomorrow, it would be very useful to have Mr. Aird's comments in front of us, rather than simply relying on memory as to what his advice and counsel was.

Mr. Chairman: I think that is a very reasonable request, Mr. Philip. Mr. Forsyth heard your suggestion, and I am sure he will take it up with Hansard immediately. Hopefully, they will respond.

Don't forget the meeting tomorrow at 10 o'clock.

The committee adjourned at 5:21 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
MEMBERS' CONFLICT OF INTEREST ACT
TUESDAY, JANUARY 12, 1988



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From the Ministry of the Attorney General:

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

Individual Presentation: .

Bryden, Dr. Ken, Professor Emeritus of Political Science, University of Toronto

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, January 12, 1988

The committee met at 10:15 a.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: I call this committee meeting to order. The members will recall that we want to finish going through the bill this morning for the first hour, more or less, with the Attorney General (Mr. Scott). Then in the second part, from 11 to 12 or 12:30, we have Ken Bryden to speak on Bill 1.

Hon. Mr. Scott: I think yesterday, when I was taking you through the sections of the act, trying to describe the policy that they were designed to reflect, we had concluded sections 6 and 7 of the bill.

The next section I turn to is section 8, which is the active section in the legislation in the sense that it describes what a member will do if the definitions in the act raise a concern in his mind that he may be in a position where he has both a public duty to act, decide or vote and a private interest that may be affected by that act, decision or vote. It is relatively simple and follows the model that is now quite common in municipal governments and boards of education. It says:

"8(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the assembly or the executive council, or a committee of either of them, shall, if present at a meeting considering the matter,

"(a) disclose the general nature of the conflict of interest; and

"(b) withdraw from the meeting without voting or participating in the consideration of the matter."

It will be of some assistance to you to know that there is a fair amount of jurisprudence on how that is done, the process by which it is done. It is anticipated by the statute that a member or a cabinet minister finding himself having grounds to believe that he is in that situation will do those things.

I anticipate that when it comes to votes on the floor of the House or in committee, the House and the committee will have to develop a system to record those declarations and to deal with attendance. In the House itself it is a relatively simple matter in terms of attendance because if you have not voted, it is clear that you did not attend the vote. But you are obliged under the statute to do more than that: that is, not to attend the debate.

So the House will have to develop a mechanism, under the leadership of the Speaker, that will permit, when a clause of a bill or a bill comes forward, a member who has a conflict with respect to that bill--let us say the superannuation fund for teachers--to stand up and say, "On Bill 91, which has been called today, I have a conflict of interest." You will have to disclose the general nature of the conflict, which in that case will be: "The bill proposes to provide pensions for teachers, and my spouse is a teacher. I herewith withdraw from the assembly during the period of time when this bill is debated and voted on." The committees will have to do a similar thing.

I can tell you that, for these purposes, cabinet has already devised a system in which it allows members to describe their conflict at the commencement of an agenda item and keeps a record of attendances in addition to the minutes. Minutes of cabinet, as you may know, are very lengthy and set out the discussion of the item. We now keep an attendance roster. The attendance roster is, in a sense, a negative one. It describes who has declared a conflict of interest, in respect of which item and whether they have participated in the discussion of that item or been present for its discussion. The other interests of government will, it seems to me, have to do the same thing.

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Mr. Philip: I have a couple of questions, because I can see that chairmen are going to get into a situation where someone sitting on the standing committee on public accounts says: "Mr. Chairman, I am not sure whether or not I might have a conflict of interest. Here is my situation." The chair and the committee are then thrown into a position of being asked by the member whether or not he or she is in a conflict.

I am wondering what happens in that kind of dynamic. I can see some pretty unusual sorts of situations where the chair says: "Oh, that is not a conflict. Let us carry on." Then suddenly, down the line somebody actually says, "It was a conflict."

Hon. Mr. Scott: The only way I can help you, I think, is to describe the approach I have developed for myself, which may have some merit or it may not, depending on how you view it.

The first thing is that if a member says, "I may have some conflict," he had better begin with the assumption that at that moment he has reasonable grounds to believe that he has a conflict until he can carefully examine it, a careful examination. In other words, he had better treat himself as having a conflict until he can, after reviewing the facts or his interests or the bill itself, determine that he has not.

For example, if a bill comes to committee on the teachers' superannuation fund and your spouse is a teacher, you may look at the title of the bill and say, "This bill deals with pensions for teachers; I have a conflict," and you had better say so right away, loud, for the record.

You may then leave the room, examine the bill and say: "Well, this is called the teachers' superannuation fund bill, but it does not deal with teachers, it does not deal with pensions and my spouse's interests are not affected. Therefore, I do not have a conflict. I propose to return." It seems to me the individual member has to go through that process to make a judgement for himself.

The reality is that those judgements are from time to time going to be

wrong, because we are all human. They are going to be wrong in the sense of allowing you to excuse yourself from deliberations in which you are entitled to, and therefore should, participate, and they are going to be wrong in permitting you to attend in deliberations where you should not.

That is why the commissioner is, I think, an invaluable aid. What is frankly contemplated is that the opinion requested of the commissioner should be an opinion that you should be able to get fairly expeditiously. I do not know whether you can get it within the 20-minute rule that we have in committee, but the idea is that you would be able to ask the commissioner and he would be able to tell you.

Presumably, a little foresight--you know the bills that are coming to committee ahead of time--will enable you to get the commissioner's advice, which will then be a protection for you and your justification for being absent.

If one were to ask the chairman, if I were the chairman, I would not answer the question. I think you would have to say, "Look, that is a matter for your judgement, not mine, or for the commissioner's judgement." If I were the chairman, I would not give the advice, because I would feel very uncomfortable if, having given the advice, upon a complaint it turned out the advice was wrong and the member to whom I had given the advice had to vacate his seat.

So I think it is going to have to be an individual matter. I do not give advice to my cabinet colleagues on this subject; I tell them to satisfy themselves. I think that is just going to be one of our individual responsibilities.

Mr. Philip: One other question. I take it that, under this section of the act, you do not have to declare if you have a pecuniary interest in the matter, only if the particular legislation or whatever is being discussed would be to increase or give you an advantage.

For example, if I were a doctor who was voting for some matter that would actually put extra restrictions on doctors, and the medical association were strongly opposed to it, I could, in fact, vote against my own interests, if you like, or against the interests of my group, and even participate in the debate.

Hon. Mr. Scott: I am not sure that you can. The proposition that you advance, as I understand it, is that in a matter where you have a personal interest, you should be entitled to participate and vote, if you are going to vote or speak against your economic interests. I do not think that is permitted. I think the ground rules are, if you have an interest as defined by the act, that is the end of it. The fact that you are going to cut the legs out from under your economic interest is not justification.

The reason for that is one of principle. It is not always going to be easy to tell on the ground whether you have advanced your economic interest by voting or opposed it. For example, it might be said that a doctor who found himself, as a member of the Legislature, confronting the extra billing ban, which the profession by and large rejected by official resolution, would be entitled to say, "I am going to vote for the ban on extra billing and that is against my interest." It may not be against his interest. It may be that he is saying to himself, "I am voting against my profession, but the collection rate for my account is going to be so much greater that I really like this ban on extra billing deep down in my pocketbook."

That kind of judgement about whether a vote against your economic interest is really one against your economic interest is very difficult to assess. I think the scheme of the act is, if you have an economic interest in the issue, you should absent yourself and, of course, that is defined by section 2. Private interest is particularly defined, so that if the issue affects a broad class of electors, including you, you may still vote on it.

For example, if the teachers' superannuation fund bill comes into the House and your spouse is a teacher, it is a difficult question to conclude whether you have a conflict of interest in that bill. That is the kind of question I think you would want to take to the commissioner. You would say: "Look, there are thousands of teachers in the province. My spouse is one of them. Is that class of teachers, numbering tens of thousands, a broad class of electors within the definition of private interest so that I can vote, even though my spouse is one of them?" I have some difficulty predicting how you would decide that question.

Mr. Philip: Another example would be that there are a number of farmers or people who own farms in this Legislature, and every agricultural bill, then, will mean that they will be exempt. In a minority government that might mean the difference between defeating or carrying a bill.

Hon. Mr. Scott: The problem is that almost all bills affect a class of people. The class may be very large, all the residents of the province, or very small, all the people who live on McClure Crescent, to take an example. Somewhere along that spectrum a line has to be drawn where the class is sufficiently small that if you are a member of it, it is thought that your particular interest is involved.

If there were a bill introduced for the relief of the McClure Crescent residents and you happened to live on McClure Crescent, I think everybody, and perhaps the commissioner, would judge that the class was sufficiently small that you could not say that you had no private interest and you would not be permitted to vote. If, on the other hand, the class is all the farmers in the province, I would have thought the class is so big that you would be entitled to vote.

Mr. Philip: What would be the difference between the farmers and the example about doctors that I used?

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Hon. Mr. Scott: In the example you gave, there would be no difference except that, as I understood it, the private interest does not include an interest in a decision that affects a member as one of a broad class of electors. It might be that the number of doctors is sufficiently large that you would be entitled to vote to either ban or not ban extra billing. Those questions are going to have to be decided for yourself, or if you want to protect yourself, you are going to have to ask the opinion of the commissioner.

Mr. Chairman: What about the example of more legislation? In fact, no matter what the kind of legislation is it helps lawyers because it probably leads to more litigation, or there is the general class where you can say that just because you passed another piece of legislation, it is going to help lawyers.

Hon. Mr. Scott: We are going to have to make the same kinds of

judgements, and they are not going to be easy. If it is the public will that you should not be entitled to vote where you have a conflict between your formal duty as a member of the Legislature and your private interest, this is the business of deciding what the private interest is that will put you in that situation.

It is not going to be easy. That is why I think, frankly, the good feature of this bill for members is that, bearing in mind the enormity of the allegation against any of us in terms of our self-respect and our integrity, the position of the commissioner is going to be critical in the regime.

Mr. Breaugh: I want to pursue the conundrum that is here. You are getting to a point where people who are elected to make decisions and cast votes and who have an obligation to do so can be free to interpret in the broadest sense possible that I have a conflict of interest.

It is alleged that on municipal councils this is now becoming a favourite sport. When some hot decision has to be made that is a little awkward, politically dicey, one of the favourite options now is to somehow create a conflict of interest and to declare very nobly, "I have a conflict of interest and, therefore, I do not have to vote on whether this rezoning goes through because I drive down that street every other day."

It is getting to the point where there was a guy on the Peterborough council who was bounced for a two-year period, and they said he could not run for re-election because he did not declare that he owned an interest in a property. A guy in Kitchener was bounced from the council because he voted on an improvement on his street.

The conundrum that I have is very simply this: I believe that we need a very clear and narrow definition of conflict, where the chances of arguing whether you do or do not have a conflict are rare. The broader the definition of conflict the less operational this concept really is, because we are getting to a point where a member could not perform his or her obligations as a member if we take the broader one.

If you got as broad as possible, for example, I could never vote on anything that might have an impact on my constituency. That is not why I am here. I am here to do just the opposite. I am here to vote on a regular basis on things that do good things for my constituency and on a regular basis against things that are bad for people whom I represent.

My personal definition of this is--for example, I am probably one of the few members who has actually noted a conflict on teachers' pensions. My definition, my little rule of thumb is, if the changes to the Pension Benefits Act apply to me, then I should not be voting on that because it is a conflict of interest, I would directly gain from that. If they do not apply to me, if I read the bill and it applies to every other teacher in the system but not to me personally, I do not have a conflict and my obligation to represent my constituents overrides that.

I noted that Mr. Sterling was mentioning yesterday that he wanted to clarify the definition of conflict of interest. I know this is awkward, but I think we have to be aware that we cannot stop the procedures here every time something comes up and run over to the commissioner to get an opinion. No one who chairs a committee here has any right to say, "You have a conflict and therefore you are excused from voting." For practical purposes, we cannot exercise this option too many times. I believe that what we have to try to do

in these proceedings is to get what might be described as a very narrow, but very clear and specific definition of conflict. I do not believe the purpose of the exercise is to have people walking out of the room on a regular basis and not discharging their responsibilities as members because they are afraid they might have a conflict.

The other thing that I think has to be resolved somehow is that there is a terrible conundrum here. Members of the assembly will be declaring their conflicts openly when the assembly is in session and in committee. They will get nailed with great regularity. Those who have the biggest opportunity to actually have an impact on legislation, those in the cabinet, will meet privately where no records are kept. That was discussed yesterday.

Hon. Mr. Scott: If the committee meets in camera, the same result will be achieved. I am not encouraging it. I am simply observing that it is the nature of a meeting that it is either closed or open. What occurs in the meeting is the declaration. If the meeting is open, cabinet ministers will openly declare in the Legislature what their position is.

Mr. Breaugh: I am not arguing that. I am arguing the practical ramifications.

Hon. Mr. Scott: Can I make one suggestion to you? The difficulty I had in preparing this bill with the assistance I had was that I want a nice, narrow, clear definition for me and I want a broad, general, direct or indirect--all that stuff--for my enemies, because that is life. You cannot really do that. You have to develop one definition that applies to everybody when they come to make decisions.

Bearing in mind the wide variety of issues we are going to confront, either in cabinet at one end or in committee at the other, and bearing in mind the wide range of personal interests people may have of an economic type, focused on economic interests, you just cannot find words that will encapsulate all the cases that you would pick out as conflicts if you went through a check list of examples. If I gave you 1,000 examples, you would be able to tell me by reading the list which 400 of the 1,000 you regard as conflicts, but we would not be able to devise words that would identify those 400 without bringing in some of the other 600. That is the conundrum. If we loosened the words, we would only have covered 300 of your examples.

I seems to me that a generic definition is the only way to go. The advantage of this legislation is the commissioner. I do not envisage everybody running off to him. I envisage a system in which he would begin to make decisions which would become general knowledge. They might indeed even be published. You could say X and Y if you did not want to give the names of individuals. It would be quickly clear what the position of the commissioner was on the legislation with respect to a spouse who was a teacher and a superannuation bill.

You would only have to go once on that question. If the Legislature did not like what he decided, it would simply amend the act. It will build up very quickly. He is going to have a busy first year but at the end of that year there is going to be a broad understanding of what is votable and what is not.

I am very conscious of the other point you made, that at the municipal level conflict has sometimes been used to avoid making a tough decision. We can prevent that under this statute because if a bill is coming up and you do not think some other colleague in the Legislature is going to vote on it, that

he is going to duck it because he is going to say he has a conflict and you want to see his position, you can simply ask the commissioner for an opinion on his facts and get an opinion that says he has no conflict. Then he can get up and say he has a conflict, but you have the lie to that right in your hands and can say, "No, Jones, great try." That is probably how you would say it. "Great try but you have to be counted with the rest of us."

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Mr. Breaugh: To conclude on this, the more I think about it, the more I think what we will grope for here is the narrower definition, that all of us, as a consensus, will see that in this instance there would be a clear conflict of interest that it is worth doing something about. There will be kind of marginal conflicts, theoretical conflicts, on a wide range of things, but they are not worth bothering with. Do we want to get ourselves in the position where the assembly of Ontario spends its time debating: "You have a bigger conflict than I do and here is the commissioner's ruling. You say you have a conflict but he says you do not have a conflict." Is that what we are here for? I do not think so.

I would advocate that we go to a narrower definition on those matters where we all deem it to be a clear conflict of interest and leave it there. The rest of the time we can squabble among ourselves and thumb our noses at one another, but we will all agree that will be the end of it. We will go for those things where we feel, as a consensus group: "There is a clear conflict of interest that is worth bothering with. For the rest of it, you can do whatever you want with it, but do not waste everybody else's time about it."

Hon. Mr. Scott: One of the things we have done in section 2, which is where the definition is, is that we have said "his or her private interest." You may want to say "his or her private economic interest," which would reduce the number of conflicts.

Mr. Breaugh: Yes.

Hon. Mr. Scott: There will be lots of interests to advantage your children and your grandparents that have nothing to do with your economic interests. You can build in those qualifications. I frankly look for direction from the committee. I should not say "direction"; I look to this consultative process if you want to reduce the scope of this bill.

Mr. Breaugh: "Direction" is a better word.

Mrs. Sullivan: I have a couple of points relating to matters which have been raised this morning. It seems to me that the interest of the community is best served if there is a broad range of expertise, whether gained through professional, business or social activity in the community, represented by the members of the Legislature. To cut off or eliminate the participation of that expertise, no matter how gained--it may indeed be through community activity--really limits the effectiveness of the legislative process.

One of the things that struck me from the remarks of the Attorney General yesterday, was that, for instance, as a member of the Stratford Festival, I get a deal on tickets because I buy early. Does that mean that at some point I may want to have a different influence because that happens to be a personal interest of mine and I know something about Shakespeare?

It seems to me that those things are limiting in the interpretation

of this bill. It seems to me, however, that this bill is ultimately going to lead to the point where the private member is going to have to become a full-time member of the Legislature with no outside interests. Because even if the definition of conflict of interest is further limited by specifying a pecuniary or financial or economic interest in section 2, those kinds of interests relate not only to personal and family incomes, but also to the corporate interests of that person.

I was interested last night at a meeting of Burlington town council--it kind of made me chuckle--when one of the members of the council, in the regular declaration of conflict at the beginning of the meeting, indicated he was a salesman for a company that supplied another company which, through a subsidiary, had an interest in a land question which was coming before council.

It seemed to me that there was really no conflict there. He sold sparkplugs to somebody who did something else much further down the line. His feeling was that the interest in that particular piece of land would ultimately have affected his sales. I actually asked him after if he really did feel there was a conflict there or if he simply did not want to participate in the vote. He said, "Well, there was a little bit of both. So you can go a little bit too far in a declaration of conflict, as well, to eliminate participation in a way that would otherwise put you on the record with your constituents.

Hon. Mr. Scott: In this assembly, you just do not show up. You say you were somewhere else.

Mrs. Sullivan: You can do that, or you can be on the record for withdrawing. It seems to me that the (inaudible) is that you want to be on the record.

Hon. Mr. Scott: I suppose this provides a legitimization of that exercise.

Mr. Philip: I think that one of the things that is being held is that there is a dynamics of politics where a--

Hon. Mr. Scott: You may be remarried without declaring it. I am sure there is some (inaudible) in that.

Mr. Philip: There is a dynamic in politics where a group of people might conceivably say, for example: "There are no nurses in the Legislature. It would be useful for us, as a group, to help Mrs. So-and-So win the Liberal nomination in Scarborough-Ellesmere." That actually happened. I do not find that is particularly offensive if it is a rational decision and if somebody can appeal and get support that way, on that argument that there are no nurses in the Legislature, at least none that I know of. I think your potential opponent for your nomination was making that argument. I think that if you are not careful, you may hurt the dynamics.

There might be a group of condominium owners who say, "There should be somebody there who understands condominiums. Therefore we are going to support Ed Philip for nomination." That really did happen.

Mr. Breaugh: Whoops, confessions coming out.

Hon. Mr. Scott: And there should be people there who work for drug companies so we will know about that part of the world. There should be people there who are active in trade unions and people who work for banks.

It is obviously desirable that people from a wide variety of backgrounds should come to the Legislature, but the question becomes what do they do when they get there, because of the perception that certain bad guys are there to vote their economic interests. "We never vote our economic interest; you do." That is the perception that is rife, as I have seen it over the last two and a half years. I am not criticizing it. It is a natural phenomenon.

Because this bill imposes restrictions on all of us, we should take our time about it. I do not think we should rush into anything. We should be confident that we have something that we can live with that does not damage either the executive capacity of government or the legislative capacity, and that is right. But we are attempting something that has never been successfully done, so you can get a sense of the challenge.

Mrs. Sullivan: The other aspect leading to the personal financial interest conflict is one that I find a bit puzzling, and it relates to spousal interests or involvement in professional or community associations, by example. I want to speak a bit from the ad hominum in this situation.

My husband is a corporate president.

Hon. Mr. Scott: I thought you were going to say "mogul" for a minute.

Mrs. Sullivan: No, not that. He belongs to many organizations, and I have no idea which professional or special interest organizations he belongs to or participates in, or in which his other directors by example participate.

Hon. Mr. Scott: It is not your hobby to discuss those things with him.

Mrs. Sullivan: No. As a consequence, from time to time though, organizations do come to argue a special issue or to seek an improvement in legislation relating to that situation, and indeed even if I, as a member, were in that situation, could I hear, could I argue on their behalf if I was convinced of their argument, or oppose it if I were not convinced of their argument?

Hon. Mr. Scott: I think you could.

Mrs. Sullivan: The freedom of participation, you see, is one that concerns me. That is one of the areas--even if I did know--maybe an electrical situation and they want a break on retail sales tax and would I support that break. These are things, I think, that--

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Hon. Mr. Scott: If this bill had been drafted 25 years ago, there is no question in my mind that there would have been absolute identification between the member and the spouse. If the spouse had it or the spouse did it, it was the same as if the member did because that is the way we were 25 years ago. Maybe I should say 50 years ago, but that is the way we were.

The trick now is to recognize that spouses should be able to have an independent business and economic life that is not controlled by this legislation. That is to say that whatever your husband does should be completely unrestrained, but it does not follow from that what you do in the Legislature, having chosen to marry him, should be completely unrestrained.

Interjection.

Mr. Breaugh: You need a good lawyer.

Hon. Mr. Scott: As an old friend, you can tell Jordan from me that when he married you, you picked up a lot of baggage along the way, which are his interests and his economic concerns. While there is nothing in this legislation that should control in the least--as it would have 25 years ago--his right to carry on any economic interests that interest him, the reality is that you are not going to be able to, as his spouse, participate by voting on every such matter.

I take it the Solicitor General, for example, who is married to a person in the construction field, is in the same situation. What we are trying to recognize is that there should still be a role for her and for you in politics. She should not be disqualified absolutely because her husband happens to be in a big business, nor should you. They should not be constrained in what they, as independent people, want to do. We are looking for a borderline in which there can be a restriction on the way you vote that will not generally affect your capacity as a member.

If you do not accept that, it seems to me you simply ride right through conflict of interest and say: "Well, we are not going to pay attention to it. We are going to rely on the general honour of members and nobody is going to question it except in an election campaign on the street when we hurl imprecations at each other generally."

Mrs. Sullivan: I think that the example of the corporate spouse, while it tends to be smaller these days, may in five years well be the same situation on the other side where the member may be a man and the corporate mogul may be the woman. Of course, that is something I would like to see--

Hon. Mr. Scott: Can I just add one--

Mrs. Sullivan: I think that the example does not matter, whether it is a corporate example or whether it is the example of the teacher. Mr. Breaugh has spoken about the pension plan. Indeed, using the same example, the member should then be able to participate fully in discussion and voting on the teacher's pension plan.

Hon. Mr. Scott: Yes, but can I tell you why the act has been structured as it is? We will come to this when we talk about the definition of "spouse" later. It has been structured this way because you have an economic interest by law in your spouse's economic wellbeing in the sense that under the Family Law Act, if unhappily you should separate, you get half of what he has accumulated during the course of your marriage. So there is an economic interest that you have by law in his wellbeing.

If he should die and not leave you any of his assets, you can go to court and get half of them. If you want support, you may be entitled to make a claim. It is the same for minor children. The parents of minor children who are not authorized by law to hold assets themselves in fact control the assets of those minor children. That is why we have excluded adult children, not because we had to draw the line somewhere, but simply because a parent of adult children has no legal interest in their economic wellbeing.

I can rant at my adult children as long as I want about why they do not send me some money, but I cannot compel it. I have no right to sue for it. With spouses, under the Family Law Act, the situation is different. You are building a little nest egg every time your spouse succeeds in business.

Mrs. Sullivan: Darn good thing, too.

Mr. Breaugh: I wish I could say that.

Mrs. Sullivan: Just continuing on this spousal argument and moving it back to the interests of the community, I think one of the things that concerned me in the early discussions relating to the bill was that the specific requirements for spouses may indeed affect candidates coming forward, seeking election and seeking to represent people in their community, perhaps because of lack of interest, or lack of co-operation or a feeling that there is an invasion of personal privacy not relating to the member and the member's career, but relating to the spouse.

I do know that has limited women particularly in coming forward and ultimately it may limit the participation of men in the political process. That would be something I would regret.

Mr. Sterling: I think that this section is an interesting one in terms of dealing with the whole act. It sort of drew me back to the whole reason that we are sitting here today talking about a conflict-of-interest act. We got along without one for a long period of time and we operated with the Legislative Assembly Act. The whole reasoning behind having a conflict-of-interest act was the problem with two or three cabinet ministers in this government having conflicts alleged against them and the inadequacy of guidelines dealing with cabinet ministers.

We now seem to have an act, in my view, that deals with conflict with those who are powerless--the ordinary MPP--and does not deal adequately with the cabinet ministers. That is why I believe perhaps a narrow definition of conflict is adequate when you are dealing with an ordinary MPP who is operating in the open virtually all of the time. When you are dealing with cabinet ministers, there should be a more onerous definition of conflict because they are operating behind closed doors. The whole object behind the conflict-of-interest act cannot be anything but to avoid public cynicism toward politicians and how they operate.

The ordinary MPP is virtually powerless under our parliamentary system because we normally vote as parties on most issues and deal with each other in that way. Therefore, we can be distinguished, in my view, very much from the municipal politician as such because we are operating in that fashion. When we vote, it is recorded publicly. When we speak, it is recorded in Hansard. When we raise a point of conflict of interest, it is raised publicly in a public forum, whereas if we look at our cabinet ministers, we do not know whether they were present, we do not know whether they spoke on the issue, we do not know whether a vote was taken or whether they voted on a particular issue in a cabinet meeting, whatever that might be.

Therefore, in my view, we have gone full circle in this act and it is a bit of a joke in terms of the whole object that we set out originally to do on this. By narrowing the definition of conflict, what we, in effect, do is whitewash any of the cabinet's activities with that very narrow definition and not knowing what has transpired in the cabinet meeting, who has said what or who has withdrawn. We have no public record of that as a part of this act and the commissioner has no right of access to minutes. He may be gratuitously given those particular minutes--there is no accountability on the cabinet's side of the equation.

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I believe we should do something with regard to ordinary members in dealing with the conflict questions that Mr. Philip and Mr. Breaugh raised. A section within the act similar to section 10 of the Legislative Assembly Act, which allows a resolution of the assembly to deal with a potential conflict by resolution of the Legislative Assembly, would be the kind of resolution we might want to have.

I propose that such a resolution in dealing with a conflict matter before a committee, as long as it was passed unanimously either by the House or a legislative committee in dealing with a potential conflict, would be satisfactory as far as I am concerned, if a member raised a point about a potential conflict and said, "I do not know whether there is or there is not." I would accept that kind of decision as long as that resolution was made in the open, on record and in public and was a full disclosure of the particular member's potential conflict with regard to any matter, because all committees have members from various other parties with regard to a conflict. Therefore, I think you could dispense with most of the other potential problems dealing with it.

Again, I make a distinction with regard to the municipal situation in that the municipalities are children of the province in terms of their powers and their particular problems, but provincial politicians are beholden to no one in terms of the rules they make or the way they carry on their own business. I think there would be some room for discussion in terms of dealing with an issue such as the one dealt with in section 10, a resolution of the assembly dealing with a potential conflict, which is already in our existing legislation.

I would really like to see, first of all, the ground rules with regard to disclosure of what has happened during an executive council meeting dealt with differently than with the Legislative Assembly or committees of this Legislature. By mixing the two, the Attorney General and the government have been successful in obfuscating the issue we are dealing with.

I believe the government is trying to put the two operations into one and compare a cabinet meeting and a conflict within a cabinet meeting to a conflict in the Legislative Assembly. I think it is a ratio of 100 to one in terms of the potential of conflict in a cabinet meeting and it is a ratio of about 1,000 to one in terms of finding out whether or not there was a conflict or a potential conflict in the participation of a member in a particular decision. Therefore, I think we have to have a different definition of conflict. We have to have a different set of rules with regard to disclosure as to whether or not something happened. We have to have some rights of access by the commissioner to the records in terms of attendance, withdrawals and reasons for withdrawals by cabinet ministers.

Mr. Chairman: Maybe we could have the Attorney General respond to that.

Hon. Mr. Scott: I will just make two points in reference to that. First of all, I do not regard this as the forum in which we will decide whether cabinet is going to be open and its minutes made public. That kind of fundamental reform of the system of responsible government is going to have to find its place in some other bill.

Obviously the commissioner, when a matter comes before him, has the

right and should be able to inquire about whether at an in camera meeting a member or a cabinet minister made the appropriate declaration and absented himself. We already have administratively a machinery so that the commissioner can have that access. I believe that is built into the act already by virtue of the Inquiries Act powers and the court interpretation in the last couple of years on those powers with respect to cabinet documents, which can now be produced in litigation.

I believe those powers are to be found in the statute. I will look at it again, however, and if they are not, I am perfectly prepared to consider an amendment to see that the commissioner gets them. But I do not see my mandate in advancing this bill as one involved in making cabinet an open process, whether that be desirable or undesirable. That will be for somebody else to examine, not me.

The second thing is with respect to individual members. The honourable member's request is that individual members should be governed, as he put it, by a different disclosure standard. Let us be perfectly clear what we are talking about here. The individual member, either government or opposition, is not under the restrictions in section 7 that a cabinet minister is under. He is entitled to carry on another business, and many individual members do; many individual members have to because of the salary scales around this place.

Mr. Breaugh: Where were you when we needed you?

Hon. Mr. Scott: I was listening to the Leader of the Opposition (Mr. B. Rae), who on that discreet issue is my leader as the shop steward of the place.

A private member, unlike a cabinet minister, is perfectly free to have all kinds of sources of income which he can generate himself. It is not just clipping coupons; it is going out and doing work and being paid for it. It seems to me that the disclosure system is perhaps more appropriate for an individual member who can carry on an individual business. If I was practising law as an individual member, I think it would be of great interest to the public, whose interest we serve, to know how I regularly voted on environmental concerns when I acted for the manufacturers' anti-environmental lobby regularly. I think they would be entitled to have that kind of disclosure. For the record, that was merely an example.

The disclosure, it seems to me, is absolutely appropriate for an individual member, who can be churning up clients and money any day he wants to. Now what do we do when he churns up that money? We have had members in the House who have been on the payroll of trade organizations. Surely it is a matter the public should know when a trade organization bill comes before the House that one of that trade organization's employees proposes to vote in support of it.

Mr. Sterling says it may not matter because of party discipline and all the rest of it. We have just come through a two-year period when it mattered significantly. Individual members have power, more obviously under a minority situation than under a majority situation--Mr. Breaugh can feel the diminution of power already as it slips through his grasp--but the reality is that in certain situations the power of an individual member to affect the government has been demonstrated clearly over the last two years. The power of an individual member to affect his caucus can be a very real phenomenon when issues that perhaps have not featured in an electoral campaign come forward.

I can imagine a powerful advocate in caucus who owns apartment buildings

trying to shape his caucus's view on the ban on apartment conversion, which was a statutory ban. All I am saying is, I think the public should know where that member gets his private income. If they know it, the question is, is there any obligation when he is in a position of conflict?

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Surely, if the individual member is in a position of conflict, no matter how we define that, narrowly or broadly, he cannot participate, for the same reason that a cabinet minister cannot participate, because it will be perceived, correctly, that his individual interest is going to be benefited by that vote. In that sense, it does not seem to me a vote in the Legislature is in a qualitative sense any different than a vote in cabinet. In fact, as I understand, there are no votes in cabinet.

Mr. Chairman: Just one: the Premier's.

Mr. Sterling: In response, I was not indicating opening cabinet records. I was indicating what I wanted was Judge Parker's suggestion of a recusal registry, where people who had withdrawn would register and there would be some indication of the reasons for withdrawal, etc. I am not asking for a complete revamping of the cabinet system with regard to what is going on. I think without a recusal registry, the law is a farce. There is a difference when somebody withdraws in public and when somebody withdraws in camera. There is much less of a tendency to withdraw when you are in camera, unless there is some kind of record being kept.

Hon. Mr. Scott: I have considered that, and I would be glad to get your help. The practical dilemma is that we could certainly provide at intervals a list of members of cabinet who on given days decline to participate in matters. But the list of the names is not what you really want. What you want is the list of the names and what they did not vote on. What you really want, when you get right down to it, is not the list of the names so much as the list of the names and what they did vote on; and what you want to see is the agenda of cabinet.

The problem with that is a practical one. As you know, Mr. Sterling, there are many items on the agenda of cabinet that are publicly released the next day in the form of an announcement or the production of a bill; and there is no problem with those issues. There are also other matters in cabinet, decisions of ongoing concern, which are not publicly released, and often for very good reasons. It would be hard to describe that agenda item in a meaningful way without telling you what cabinet was discussing: "The cabinet was discussing terminating a deputy minister, and John Jones failed to participate."

Mr. Sterling: But that can be overcome. We have allowed the information commissioner to have access to cabinet records.

Hon. Mr. Scott: That is because he has that access under the protection of the Inquiries Act and in the course of a necessity dictated by the matter before him. It is in that protected way.

I could certainly arrange a release of names. That is not what you want. What you want is the agenda items, and you want the agenda items, I presume--unless this is just to be a meaningless exercise--in sufficient detail so that you know what was discussed, because if you do not know what was discussed, then the name becomes a piece of useless information. If you

want to know what was discussed in cabinet, except as given out under the Freedom of Information and Protection of Privacy Act after a certain time has passed, or unless required by a court under the Inquiries Act, we are fundamentally altering the shape of our system.

Mr. Sterling: I would argue that you can draw a section which would have the same impact as the information commissioner in terms of access, giving this commissioner certain access to a recusal registry, and that parts of that recusal registry would become public when the matter would become public.

Hon. Mr. Scott: I have no trouble with that, but that is a release to the commissioner, who should be able to ask to see cabinet records that relate to agenda items, abstentions and attendance. If he in his letter of opinion judges it necessary to make reference to that, that will be his responsibility, just as it is done under the Inquiries Act.

Mr. Sterling: And you would have no trouble, once the issue becomes public, where the decision has been made, that the registry would be released with regard to that matter.

Hon. Mr. Scott: Well, what would be released is whatever the commissioner thought appropriate in his decision to release.

Mr. Sterling: If we could take the particular issue that you were involved in--

Hon. Mr. Scott: In which you were involved is what you mean.

Mr. Sterling: That is right.

Hon. Mr. Scott: I was not involved in it at all, as the commissioner concluded.

Mr. Sterling: Well, I think if you read the decision, you were and you were not involved, depending on which cabinet meeting we are talking about.

At any rate, when that decision was finally made, on November 18, and then made public on December 3, I believe that the recusal registry should have been released on December 4, or December 3. That is what I would like to see with regard to decisions that are made in cabinet and finally dealt with. I do not understand why there should be any concern about that.

Mr. Cordiano: Are you saying that on a matter that came before the commissioner and in which he deemed that there was not a conflict--

Mr. Sterling: No, I am saying that as a matter of public record--

Mr. Cordiano: Just a minute. What I am saying is, if the commissioner deemed that there was not a conflict--

Interjection.

Mr. Cordiano: I am just trying to clarify this. It is a point of clarification.

Mr. Chairman: OK. Somebody else has a supplementary, but you go ahead.

Mr. Cordiano: Following on that, the commissioner should make public the circumstances, the context in which the alleged conflict occurred; that is, the commissioner should make public any of the transcripts of the cabinet meetings in which that question was being contained.

Mr. Sterling: No.

Mr. Cordiano: What are you saying, exactly, now?

Mr. Sterling: I think the commissioner acted properly with regard to the opinion he gave and with regard to Mr. Scott's involvement with the eastern power corridor. In that particular instance, he then told of the Attorney General's involvement in the particular issue, that he had withdrawn from the first meeting but had involved himself in other meetings after that.

Now, I just think that as a matter of procedure, once the decision was made and made public, as it was on December 3, 1987, then the recusal registry dealing with that particular issue should then become a matter of public record. It should be available to the public that Mr. Scott withdrew from the first meeting but then went in and discussed it at whatever number of cabinet meetings thereafter.

Mr. Cordiano: But if the commissioner is clear--

Hon. Mr. Scott: I would love to see an amendment. I am not sure I understand your point, and if you could, with the assistance of legislative counsel, prepare an amendment, we would be delighted to look at it.

Mr. Faubert: I just want to clarify. It seems to me there is a recusal registry now in cabinet. Are decisions of withdrawals in cabinet in any way listed? Is such a thing available to the committee?

Hon. Mr. Scott: I am not sure what a recusal registry is. I had never heard it mentioned until I read the Stevens report. If you are asking, is some way of recording--

Mr. Faubert: Yes.

Hon. Mr. Scott: First of all, cabinet has an agenda, which is maintained by the secretary to the cabinet. Under the present administrative system, the secretary to the cabinet keeps minutes of the meeting. It is sometimes very full. It is not simply a resolution, a series of minutes. It may be a fairly full account of the discussion: who said what, who took which position and who took another position. We have directed the secretary of the cabinet to prepare another record which will disclose with relation to the agenda items the attendance of members and, in particular, their declarations, if they make any.

Mr. Faubert: OK. The declarations of withdrawals. So that is being done now.

Hon. Mr. Scott: Yes.

Mr. Faubert: That is what we were referring to.

Hon. Mr. Scott: You see, keeping a record of declarations of withdrawals is not always going to be good enough, because a member who is in Newfoundland when the meeting took place and was not there to vote on it is

going to have no way of making a declaration, because he was not there. There has to be some way of establishing who was there and who was not, so the record will take account of who is present and any declarations that occur.

Mr. Faubert: OK. I think that is basically the intent of what is being proposed.

Hon. Mr. Scott: Yes; and, as I say, committees and the Legislative Assembly will have to begin to do the same thing for their own machinery.

Mr. Faubert: Can we clarify one other point, then?

Hon. Mr. Scott: Yes.

Mr. Faubert: It was an interesting observation that you made. You said everyone is the same, but indeed, there are cabinet ministers and there are all others within the governmental process, within the Legislature, and there are rules that apply to cabinet ministers, because they make decisions in a different process--

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Hon. Mr. Scott: Yes.

Mr. Faubert: --than is made as a legislative decision. There are those which are executive decisions, and I think that is perhaps--

Hon. Mr. Scott: Well, I accept that, but I do not see the purpose of this bill as altering the process by which those decisions are made.

Mr. Faubert: No, I do not think we would.

Hon. Mr. Scott: I see it as simply a method, whether the process is closed and in camera at committee or at cabinet, or whether it is open and public at committee or in the Legislative Assembly, of recording the declaration of a conflict. I see it as important--the point that was made yesterday, which I agree with and which I think is covered under the legislation--to give the commissioner access to those declarations in cases where he needs it in order to judge. Those systems have not been developed for every part of our process yet, but they will have to be.

Mr. Philip: I suppose if you take this to its logical--or maybe some of us might think illogical--conclusion, you would end up having to have recorded votes at all cabinet meetings.

Hon. Mr. Scott: There are no votes at cabinet; that is the first thing. I must tell you the first time I went--I hope it is not telling tales out of school--Mr. Conway and I were having an argument, and Mr. Nixon said to me, "When are you going to stop arguing?" I said, "When they call for the vote." He said: "There aren't any votes in here; this is cabinet. The Premier expresses the consensus of the meeting." So there are no votes taken at all. I have never once held up my hand to vote yea or nay, and that, I gather, is the tradition of cabinet government both in Canada and in the United Kingdom. So there is simply in the minutes a resolution of cabinet which is the expression of the consensus of the debate as formulated by the Premier.

Mr. Philip: I guess one of the points that occurred to me as I was listening to Mr. Sterling was that as society and government become more and

more complicated, an awful lot of the real work under legislation is left to regulation, and it is the cabinet minister who then brings to cabinet a whole bunch of regulations that, I suspect, are not all that closely examined.

Hon. Mr. Scott: Well, I would accept your statement if you modified it. I think you could make the case that the real work of cabinet is done by its cabinet committees, and of course we have a similar process in those cabinet committees. There are a number of committees--the policy and priorities board of cabinet, the cabinet committee on regulations, the cabinet committee on legislation--where the nuts and bolts analysis and decision-making really take place. In the regulations committee, the members of that cabinet committee no doubt go over the regulations with a fine-toothed comb.

It is not always the case that their cabinet colleagues go through the same exercise when it gets to the cabinet level, so a conflict rule has to apply to the forum where the decision is taken, whether it be a cabinet committee or cabinet itself. In the Aird report, which Mr. Sterling referred to, you again had that two-tiered system--the legislation committee of cabinet and cabinet considering a matter--and he expected in an appropriate case that declarations would be made in both forums, if they were required.

Mr. Philip: One last point I would like to make to the Attorney General is that while we are dealing with section 2, yesterday I raised an issue on page M-36 which I hoped he would look at and perhaps just comment on, because I think it is a complementary issue.

Hon. Mr. Scott: M-36?

Mr. Philip: M-36 in the Instant Hansard from yesterday afternoon.

Hon. Mr. Scott: Oh. Let me look it up, Mr. Philip, if I may. I have not got it.

Mr. Philip: I do not think we should stop proceedings now while he reads it. Maybe he can just--

Mr. Chairman: Maybe he can comment on it later.

Mr. Polsinelli: I have a bit of concern with respect to section 2. That is, as I read it, sort of the heart of the act, the section which declares that a member has a conflict of interest if he makes a decision in the execution of his office that furthers or has the opportunity of furthering his private interest. It seems to me that is an absolute prohibition, quite a simple, understandable one but nevertheless an absolute prohibition. If precedents of past history, if previous cases decided by the court are going to be the parameters by which we judge this legislation, then the court or the commissioner or whichever body is going to be interpreting this particular section will give it the broadest interpretation possible.

I remember being a member of North York council when one of my colleagues lost his seat on council because he voted in favour of an official plan amendment. His father happened to own property within 600 feet of that proposed rezoning. As a result of that, of his role in that, the Court of Appeal reversed a lower court ruling and indicated that he had a conflict of interest.

If we are going to be using those precedents, if we are going to be

using the past decisions of the courts to interpret this legislation, it seems that this prohibition is going to be such that it will prevent Mr. Breaugh from voting on any issues relating to teachers, as his wife is a teacher; it will prevent me from voting on any issues that relate to the legal profession.

Hon. Mr. Scott: It is closest to your heart.

Mr. Polsinelli: Not necessarily, but definitely of interest.

Mr. Breaugh: Lawyers have hearts? Come on.

Mr. Polsinelli: My question, quite simply, is, do you agree that it is an absolute prohibition and do you agree that the interpretation that will be put on this section will be a very broad interpretation? If that is the case, then what can we do to ensure that Mr. Breaugh can vote on issues that affect teachers?

Hon. Mr. Scott: This is in fact a narrower provision than some, this definition, because it is hinged on decision. There are a lot of people defining conflict of interest these days who think you can be in a conflict even if you are not required to make a decision. We concluded that that goes too far, that there has to be some focus.

What we are talking about here really is a location, a space in which a member or cabinet officer finds himself. How are we going to define that space? The two poles that we have come to are the decision, at the one hand, that it is not an offence to be in the place with something likely to come up next month; it is an offence at the moment of decision, and the decision for these purposes is the moment of discussion leading to a vote.

The other pole is private interest. You could modify that by saying private economic interest. I think the thrust of the act makes it fairly plain already that it is economic interest, and certainly that is the way the commissioner yesterday indicated he was treating it. But it is difficult to define it more narrowly than that without excluding a lot of locations that you would want to criticize your enemies for being in.

Mr. Polsinelli: Do we not have a situation that when you are voting in the Legislature and you are making a decision and if that legislation that you are voting on impacts on you personally, it may be furthering your private interest?

Hon. Mr. Scott: No, it is not going to impact on you personally. It is whether it furthers his or her private interest.

Mr. Polsinelli: Bill 94 is a bill that we are all very familiar with.

Hon. Mr. Scott: I do not know the numbers. What is that?

Mr. Polsinelli: The extra billing bill. If we had a doctor in the Legislature who was not just a member of the medical profession but an actual practising doctor and he voted on Bill 94, there is no question in my mind that Bill 94 would impact his private interest, using your own example. So that is a decision that will further the member's private interest.

Hon. Mr. Scott: No. I am taken by Mr. Philip's analysis of that, which I think on reflection is probably right, that a doctor voting on Bill 94 would look at the definition of private interest and say that this decision

(a) is one of general public application--the bill clearly was--and (b) affects a member as one of a broad class of electors.

I think it would probably mean--I do not know the numbers of doctors in Ontario, but certainly if my colleague, the Minister of Health (Mrs. Caplan) is right, there certainly seems to be lots of them--that would be sufficiently broad to mean that that bill did not further, by definition, the private interest of the member and, therefore, the member could vote on it.

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As I say, when we are dealing with a broad class of electors, we are dealing with a spectrum. There will be examples all along the spectrum, bills that deal with everybody in the province, bills that deal with only the people who live on McClure Crescent, and the placement of you on that spectrum is going to vary day by day depending on what the bill is.

Mr. Philip: My supplementary is this--and it is a point I made yesterday to Mr. Aird, to which I think he agreed--that is, the true definition is actually broader than the Parker 1 definition, if I might talk about the two definitions on page 35 of the report, inasmuch as what you have is the word "opportunity." So it is not just that there is an interest, a private, economic interest, it is not just that there is a decision, but there is an opportunity. So, in fact, there may be no interest that derives from the decision at all. It is just the mere fact that there is an opportunity. The word "opportunity" there is really a very subjective kind of thing.

Hon. Mr. Scott: I think the definitions in that respect are not really different. It is the perspective from which they are defined, because it is hard to know how you could define clause 2 without having the word "opportunity" there. I suppose you could say, "at the same time knows that in the making of the decision his private interests will be affected."

Mr. Philip: No. That is a much narrower definition than an opportunity.

Hon. Mr. Scott: It is either six of one or half a dozen of the other. I do not think the word "opportunity" is where this definition is broad.

Mr. Philip: It seems to me that what you have done is you have come down somewhere between the more restrictive definition of Parker and his second definition of an apparent conflict.

Hon. Mr. Scott: No. We accept Mr. Justice Parker's bottom-line conclusion that if there was, in fact, no conflict there is nothing to worry about. I think that is an important conclusion he draws, because in the course of devising this act the question was what to do about apparent or perceived conflicts.

The first thing we know is that neither you nor me nor anybody can control the possibility that someone out there will perceive that you were in a position of conflict. Once that perception has arisen, it is not very damaging perhaps if somebody at Earl's service station draws that perception, yet if one of your colleagues in the House or a member of the press draws that perception, it is more difficult.

What do you say once you have concluded that someone has perceived a conflict? Surely what you do is ask is there really one according to our

rules. If the answer is yes, there is one, that is the end of that piece. If the answer is no, in fact there is not one, then that is the end of the perceived conflict in so far as we can grapple with it. It does not mean that the person who has the perception will alter his or her perception. It simply means, chaps, you have an imaging problem that is very real. I should not say "problem," you have an imaging attitude that we cannot deal with and which does not offend our rules.

Mr. Philip: Except he defines apparent conflict is what reasonably well-informed persons could properly draw. He is not talking about a guy who is paranoid and who thinks that everybody in government is in conflict.

Hon. Mr. Scott: No, but if you read the whole report you will find that he is defining that apparent conflict for the purposes of the offences that we create under sections 3 and 4.

We have a specific insider information rule and a specific influence rule, which he wrapped up in conflict of interest. I think that was, with the greatest respect, not helpful to the exercise, because the good thing about the insider information and influence rules is that they can be fairly clearly expressed. So why do we not express them, as we have done in the legislation, and then deal with what remains?

Mr. Justice Parker conceded at the end of his report that if it had happened that there was no conflict at all in that case, he would not have found there was simply because some people out there perceived there was. He would have rejected it. Frankly, for him to say anything else, having occupied a year, would have been very difficult. If the test of whether there is a conflict is, "Does anybody out there think there is?" the commission can be wrapped up fairly quickly. The examination of apparent conflict becomes an examination of whether there was a real one or not.

Mr. Chairman: I think we will have to go on. Mr. Polsinelli, are you almost finished?

Mr. Polsinelli: I am almost through. Perhaps the Attorney General can give me a lesson on statutory interpretation, but as I scour through the legislation I do not see any penalties for an offence against section 2. Is there a particular reason for that?

Hon. Mr. Scott: I tried to emphasize to you in the beginning that section 2 does not define an offence, because it is not an offence to be in a position of conflict; it is an offence to vote or act as a result of it. That is defined by section 8. A breach of section 8, which invokes the definition of conflict of interest, has penalties provided. Section 2 might have appeared in the definition section.

Mr. Polsinelli: OK, that answers that question.

The other question I have relates to the earlier discussions we were having with respect to cabinet decisions and the position of a member of the executive council who is in a conflict situation. It relates predominantly to the investigation the commissioner has to undertake when a request is made by the executive council.

As I understand it, the executive council will make a request to the commissioner to undertake an investigation. The commissioner will investigate and report back to the clerk of the executive council. Under that situation,

can the commissioner recommend penalties if a conflict was there, if a conflict had arisen? I do not see how he can do that.

Second, is there any opportunity for any other member of the Legislature to know (a) whether a request has been made by the executive council to undertake some type of investigation and (b) what the report is from the commission with respect to that investigation?

Hon. Mr. Scott: That brings me to the next stage, which is sections 13, 14, 15 and 16, the decision-making role of the commissioner. You will see that the commissioner is not a self-starter, apart from the disclosure exercise. If someone has an allegation, that someone has to bring the allegation to the commissioner.

Section 13 provides that a member may request an opinion from the commissioner on his own obligations. That is the protective device that will enable a member to assure himself that he is not going to participate where he should not.

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Mr. Chairman: Can I just get clarification on your mentioning that the commissioner is not a self-starter? This was raised with me this morning. He is in possession of a lot of information. If he sees that cabinet minister X is in a conflict, can he not do anything about it? Will he just sit there and not do anything about it?

Hon. Mr. Scott: That is precisely right. He is not a vigilante group; he is just a decision-making tribunal in so far as decisions are concerned. With respect to disclosure, he has the obligations that Mr. Aird described yesterday to assure himself that he has got to the bottom of your list of assets. But when it comes to giving an opinion, he is not a self-starter.

The first way the matter gets before him is if you ask for an opinion yourself under section 13. The second, under subsection 14(1), is that a member with reasonable and probable grounds to believe that another member is in contravention may apply to the commissioner for an opinion. Subsection 14(2) provides that the Legislative Assembly, by resolution, may request the commissioner to give an opinion. Subsection 14(3) permits the executive council to request the commissioner to give an opinion.

What happens following that request is that, essentially, under section 15, the commissioner may conduct an inquiry. He is not obliged to. We have left to him some residual discretion to say, "I'm not going to inquire into this." Then when he does, of course, the Legislative Assembly may do what it wants. It could conduct its own inquiry.

He is not obliged to launch an inquiry every time someone asks for it, and I think it is just a precaution designed to ensure that some member who wants to abuse the system and makes allegations about everybody that are trivial should not be able to launch an inquiry at the commissioner stage in each and every case.

He then conducts an inquiry, and when the request is made by a member about himself or about another member or by the Legislative Assembly, he gives his opinion and may utilize the powers under the Public Inquiries Act.

At the end of the process he gives an opinion, and if the member has

requested the opinion about himself, he is not entitled to disclose that opinion without the member's permission. So if Mr. Breaugh asks for an opinion about his own proposed or previous conduct, he can give an opinion and he gives the answer to Mr. Breaugh. If Mr. Breaugh wants to make it public he can do so, but he is not obliged to do so. But the reality is that, if Mr. Breaugh does not want to make it public, another member, if he knows the subject matter, can make the request to the commissioner and then it will have to be public.

Mr. Breaugh: May I interject for a minute? Is that not really kind of a ridiculous system that is being set up?

Hon. Mr. Scott: I do not think so. I would be grateful to have your views about what the system should be. Whether it is ridiculous or not I leave to others to decide, but you need a system and you have values to protect.

I am not certain, for example, that every time a member goes to the commissioner and says: "Look, my wife is a teacher and I am thinking of voting on this bill. What is your opinion?"--I am not satisfied that in every case like that the fact that it has happened should be made a matter of public record unless the member wants it to be.

Mr. Philip: But what could be--

Mr. Chairman: Mr. Philip, I am sorry, I have to proceed here because there are a number of other people who have not even had a chance to put one question forth. I have heard you twice, plus one supplementary, and I just have to try to get them. Then I will get back to you later on, if I can.

Mr. Polsinelli, are you finished?

Mr. Polsinelli: Still on my point about when the executive council makes a request, I do not think it has really been addressed by the Attorney General. I understand the procedure. The procedure is that the executive council will make a request, the commissioner may conduct an inquiry, and I assume that if the executive council makes a request, the commissioner will conduct an inquiry and then report to the executive council.

Now if the report is such that the commissioner concludes that there has been a conflict, can the commissioner recommend that penalties be imposed, and is there any opportunity for the members of the Legislature to determine that, in fact, the commissioner has made a report to the executive council determining that, whatever the request was, there was a conflict situation?

Hon. Mr. Scott: He cannot because there has not been a public inquiry, but if a member raises the question, it will go to the commissioner and then he can.

Mr. McClelland: I will be very brief. I know that Professor Bryden has been waiting patiently. I trust they might be able to revisit us at some length as we go to clause-by-clause.

I was concerned about a comment and wanted to go on the record with respect to what Mr. Sterling said vis-à-vis a different definition of conflict for executive council and members. As I said, I would like to flesh this out in discussion. I understand that Mr. Sterling's comments were more tied in to the process of decision-making, but I think it imperative--I feel this very strongly and I want it on the record that I do not think we can have different definitions of conflict. The standard of conduct is not on a sliding scale.

The Attorney General visited at some length the various responsibilities and the numerous potential positions a back-bencher could be in; by way of example, obviously, in cabinet committee on regulations this afternoon. That is just one of many examples, and we could sit here at length and talk about all the different situations that may arise.

Having said that, I would like to pick it up again but, as I said, my concern is to go on record that I think it imperative we have a consistent standard for all members of the assembly, regardless of which functions or function they serve in. Having said that, let us move on and pick it up later, I hope.

Mr. Eves: I just wanted to ask the Attorney General, and I will not spend much time on it because we can do this again in clause-by-clause, but I wanted to get some sense as to whether he would agree with some of the comments Mr. Aird made to me in response to about half a dozen questions I had yesterday afternoon.

The first item I brought up with Mr. Aird was one of the commissioner, when he or she is appointed under the act, being approved by the Legislature. Mr. Aird's response was that he did not want to name a percentage figure but thought "really a large preponderance of people in the assembly, the members, approve of the choice of the commissioner." His preface to that was that this is not going to work unless that happens. Could I have your viewpoint on that?

Hon. Mr. Scott: I have no viewpoint on it. The practice, as I understand it--I have not been here long--where we have officers of the assembly, is really to require some broad measure of support. The freedom of information commissioner, for example, was nominated by the government, but his nomination was the subject of consultation with the leaders of both opposition parties, and they supported it.

I think that is the desirable way to do these things, but we always have to recognize that there may be a time when one party is so vigorously opposed to some statute that it is not going to agree to anybody because it does not like what he is authorized to do. For example, if one party did not want the auditor, I do not think the failure of that party to support all nominations of all potential auditors should stand in our way of appointing one. I think we are going to have to deal with this on a case-by-case basis.

Mr. Philip: That has never happened.

Hon. Mr. Scott: It has never happened and I do not envisage it will happen. It is on address of the assembly and there is an understanding about what that means in the appointment of the Speaker, as well as in the appointment of other servants of the assembly. I am content with that kind of standard.

Mr. Eves: That was not the intent of my question to Mr. Aird, and when he was answering I certainly gathered that was not his intent either, but there is no point in debating it any further. I wanted to get your reaction to it and I have it.

I also asked him if he thought a member and his or her spouse should be entitled to receive independent legal advice under the legislation. He agreed that would be a good idea. He also agreed that if indeed that came to pass, the Legislature of Ontario should consider paying for such independent legal advice.

Hon. Mr. Scott: First, there is no reason why they should not receive independent legal advice if they want it, right now. As a lawyer, I would encourage them to do it. The question of whether it is going to be paid for by the Legislative Assembly is a question for the assembly. It is a matter of internal economy.

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Mr. Eves: OK. The third matter that I raised with Mr. Aird was his letter to the Clerk of December 9, 1987, in which he said, among other things, "I have nevertheless insisted upon full disclosure of all such contracts and dealings and I have included disclosure of them in the public statements." That is the end of the quote. He was referring to the fact that the bill does not, "curiously," as he puts it, "expressly provide for disclosure by members of contracts or dealings that they, their spouses and their minor children may have, directly or indirectly, with ministries, agencies, boards and commissions of the provincial government."

I asked him if he thought the legislation could be or should be amended to make that requirement more definitive and he said the answer is clearly yes. Would you concur with Mr. Aird on that?

Hon. Mr. Scott: I am not sure I understand the point that Mr. Aird was making. I will want to read what he said in detail. But if you go to section 11, that section requires the member on his own behalf, on behalf of his or her spouse--and the spouse, if the spouse attends--and the minor children, to list all assets, liabilities and financial interests and list any sources of income received in the previous 12 months or anticipated to be received in the succeeding 12 months.

Now any contract with a government, agency, board or commission would be either an asset of the member, his spouse or his minor children or would be a source of income. They would be obliged to disclose that to the commissioner under section 11. For starters, I see this act as requiring the disclosure of that information to the commissioner. I do not see any curious omission at that stage.

Then you come on to whether the commissioner is obliged to make public disclosure. It may be that he had some concerns about the exemptions, but as I read them, he would be obliged to disclose the assets, liabilities and financial interests of the member's spouse and minor children unless they were exempted under section 12.

The only exemptions that are applicable, it seems to me, are if they have a value of less than \$1,000 or if they produce income of less than \$1,000. To this extent--I think I have it--he is right. That is to say, if a spouse had an income from a board or commission that was less than \$1,000, it would be disclosed to the commissioner but it would not part of the disclosure statement. If it was worth more than \$1,000, it would. I think that is how I read the act. That was certainly its intent.

Mr. Eves: So you feel that the act covers the situation referred to by Mr. Aird in the letter.

Hon. Mr. Scott: I think it does.

Mr. Eves: Would that also, in your opinion, include interest in a corporation or a corporation that the member or the spouse may control? I am

thinking of a private corporation, as opposed to shares in a public corporation.

Hon. Mr. Scott: Yes, because under section 11 the member would have to disclose that to the commissioner because those shares would be an asset under clause 11(2)(a), and if the shares paid dividends they would provide income under clause 11(2)(b) and they would have to be disclosed to the commissioner.

The next question is: Is the commissioner obliged to disclose them to the Legislature? Again, he would be obliged to, as I read it, unless it is exempted under one of the clauses (a) through (1), which really deal with assets of less than \$1,000 or unless it is exempted under subsection 2, which is the confidential basis exemption. I think that would be covered.

Mr. Eves: OK.

Hon. Mr. Scott: If, in the committee's view, there is any doubt about it, I would be glad to have your suggestions to make it more clear.

Mr. Eves: The next item I would like to touch upon is the next reference he made. I believe it was on page 5 of the same letter. He was talking about management trust in subsection 7(4) of the act. He went on to say that the language of that section and subsection suggests that the management trust is but one way in which a minister can comply with the requirement that he or she not carry on business.

He went on to say that he found it necessary to require ministers to enter into formal or documented arrangements to transfer control of their interest to a third party. He has accepted that he or she has complied with clause 7(1)(b) by placing shares in a discretionary trading account with an independent investment company upon the condition that the company exercise its discretion without control by the minister.

He further went on to say, when he was answering a question that Mr. Breaugh asked, and I also brought it up at the end, that in some instances he considers it absolutely necessary or essential that ministers divest themselves of some of their holdings. He agreed, when he was talking to Mr. Breaugh, myself and Mr. Polsinelli, that he would deliberate further on this and provide the committee with his recommendations as to how perhaps the act could be strengthened in that regard. Do you see any need for such strengthening?

Hon. Mr. Scott: I would be delighted to hear what he says. Let me begin by saying that divestment is always an option. You can avoid disclosure to begin with by divestment. You simply sell what you have and then you have no problems. Divestment is always there, and in so far as you divest, the act is inapplicable to the assets that you have now got rid of. Divestment is always an option, which basically makes the act inapplicable to those assets.

The management trust relates only to carrying on a business. Clause 7(1)(b) says, "A member of the executive council shall not...carry on a business." The issue becomes, what is going to happen when the member has a business and he is now told he cannot carry it on? He can divest it. He can sell it. There are some businesses he may not want to sell or cannot sell. What we have said is that this is a method by which that business can be managed in his absence. It is managed in a very public way. It is not a blind trust; it is public and he is caught with the assets it accumulates.

The question is, why is "if" there? "If" is there because conceivably there may be other ways that satisfy the commissioner that a business can be managed so that the member is not carrying it on. For example, let us assume I owned a real estate business and entered the cabinet. I could divest it by selling it. I could appoint a manager of it, but surely I could also surrender my licence to carry on real estate sales to the commissioner of real estate under the statute. That would not be a divestment of my business. I will leave everything in place, but I am going to let my employees go or let them carry on if they have licences. I am going to have no interest in it.

I am not saying the commissioner would judge that not to be carrying on business, but it is something he might conclude is not carrying on business; I have surrendered my licence for the time being. If he did, then that might satisfy him that the member of the executive council was not carrying on business.

The only point of subsection 4 of the management trust is to satisfy that standard. If, at the end of the day, the commissioner is satisfied that the cabinet minister is not carrying on business, that is what the act says he is not supposed to do and that is the end of that inquiry.

I would be very grateful to see what Mr. Aird has to say, and I do not think there is any disagreement between us, but the reason "if" is there is that there may be other methods of persuading the commissioner that you are not carrying on a business any more.

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Mrs. Sullivan: Just on that point, presumably if one is a professional, say a lawyer, one would want to continue to pay one's fees to the law society and so on even while one was a member of the executive council. Similarly, I wonder if one can, for instance, cease to carry on a business if one indicated to the taxation authorities that a corporation was an inactive corporation and capital tax was paid, or would that have to be something, once again, that a management trustee did on behalf of the member?

Hon. Mr. Scott: I do not know the answer to that question, but the first example you gave of the lawyer maintaining his right to carry on business by paying his fees and making the annual returns to the law society is really the opposite side of the real estate example. It might be that the commissioner would conclude, as long as he is not seeing clients or making any money because somebody else sees clients on his behalf, that he can still be licensed to carry on the business as long as, in effect, he says, "I'm not and I'm not making any money from it" and proves that. You are right that in the alternative, if you took "if" out of subsection 6, he would have to appoint a manager to manage a law firm that would not have a lawyer in it. It does not make sense.

Mr. Breaugh: Sounds pretty good.

Hon. Mr. Scott: Your kind of law firm.

The reason we put "if" in is that the question for the commissioner is always going to be, "Is the member of cabinet carrying on a business?" If the answer to that, having looked at all the facts, is, "No, he's not carrying on the business," that is fine. If the answer is, "Yes, he is," that is not fine.

One way to cease carrying on a business is to sell it. The other way to

cease carrying on a business under subsection 4 is to have someone manage it for you. There may be other ways to cease carrying on a business.

Mr. Eves: I want to take the idea of this concept of divestment or not divestment one step further. Suppose a cabinet minister, a member of the executive council, owns a substantial number of shares in a private corporation or his or her spouse or both of them do, and that company carries on business, has a contract, in fact, directly with the Ontario government or one of its boards, agencies and commissions. Is it your opinion that that is all fine as long as he or she discloses that conflict and does not partake in any vote with respect to that contract; that it is fine for that member of the executive council to do that?

Hon. Mr. Scott: I am not in a position to say that is fine. The issue presents in the following way. A cabinet member's spouse has certain business in which he contracts with the Ontario government. I mean, teachers contract with the government, not always the Ontario government. There are all kinds of contracts, big, small and indifferent. What would happen in that situation, I presume, is that a member would go to the commissioner and say: "I propose to participate in the following decision-making exercise. Am I going to be in a conflict because my spouse has publicly declared that he has the following contract?"

We have--well, I should not say we have; it will either be in the disclosure statements or not. Let us assume that the wife of a cabinet minister is a schoolteacher and let us assume that she is paid \$500 a year by the government of Ontario to correct examination papers. This payment is not from the school board, it is from the government of Ontario. She has a contract with the government of Ontario to correct examination papers, and that is all disclosed. The public knows about it.

Does it follow from this that the cabinet minister cannot be a member of cabinet? It may follow that he cannot be the Minister of Education. It may follow that he cannot participate in certain decisions. He could not participate, I presume, in a decision to radically increase the amount we pay for correcting exam papers, but surely it does not mean he cannot be the Attorney General or the Minister of Consumer and Commercial Relations.

But if you thought it did, under this act what you do is you write to the commissioner. He can conduct an inquiry to see what the contract was, to see what the actual decision or the proposed decision was and he will give an opinion. He is not always going to be right, but it is not going to cost \$1.5 million for lawyers every time we do it, which is what the other model requires.

Mr. Eves: In the example the Attorney General has chosen, I do not think there are many people who would argue that that would indeed be a conflict. The point I want to get at is that it would be possible though, as I read the act, under the current act for a minister of the crown to have a spouse who has a substantial interest or a controlling interest in a private company that has a contract with the government of Ontario, perhaps a very direct one, for say, \$1.5 million a year, and the way the act is worded--correct me if I am wrong--as long as that minister declares that conflict and does not participate in any vote or debate, etc., on that item, that is fine. His spouse can make \$1.5 million a year from the province and that is hunky-dory the way the act is worded. Is that correct or not?

Hon. Mr. Scott: You cannot answer abstract questions like that,

because you need to know what the contract was for, you need to know whether it was a contract that was available to anybody else in the province or whether it was a general application, you need to know what the minister's job is, you need to know what the decision that is being made is.

Clearly, no minister could participate in the decision to grant that contract, but that is not the question you are asking. The question is, can he continue to be a minister when his spouse has that contract? That is why the commissioner is there, so that he can evaluate the nature of the contract against the nature of the decision or the role that is going to be undertaken by the minister. There are not perfect answers.

Mr. Chairman: I have a concern here. It is shortly after 12 noon. We still have Dr. Bryden to hear and he will be about half an hour. We have a few more questioners to finish up.

Hon. Mr. Scott: I am near the end of my review, except for section 17.

Mr. Chairman: If you like, we could probably continue the questioning of Mr. Scott until about 12:30, go on to one o'clock or thereabouts to hear Dr. Bryden, and then have this afternoon off. The other alternative is to close off very shortly and then come back this afternoon and stretch it out, so whatever you want to do. I do not mind finishing off now.

Mr. McClelland: What is Professor Bryden's schedule?

Mr. Chairman: He is prepared to come back this afternoon, although he said he would be about half an hour. If we can finish this by about 12:30, we could have him from 12:30 to one.

Dr. Bryden: I said I would be at least half an hour.

Mr. McClelland: I will waive my question. I will get to it in clause by clause.

Mr. Breaugh: May I make a suggestion? I take it that the Attorney General will be available for the next little while to monitor the proceedings. I sense that we might like to have him when we have heard from whatever groups there are to come in. We might like to have the Attorney General come in for an hour or so and just kind of respond to some of the concerns that other people have raised. Perhaps that would also give the opportunity for members who want to ask him further questions. Maybe that would be a way to proceed and we could hear Dr. Bryden now.

Mr. Chairman: Would you be available tomorrow afternoon?

Hon. Mr. Scott: I think I am available. I am not certain, but I think I am.

Mr. Chairman: It would be a good time tomorrow afternoon, because we have two delegations tomorrow morning.

Hon. Mr. Scott: I would like to hear the delegations, too. Perhaps I can just finish off what I was going to say by referring to one other section--which will mean that I have now referred to all the sections, which is my job--and that is section 17.

Section 17 is, in a sense, an anomaly under the statute because it is

the one offence that is created that is not punished by the assembly's adopting the penalty that the commissioner has recommended. It is an offence that is, of course, committed by a person who is outside the assembly; namely, an ex-member of the executive council who lobbies for a contract within 12 months.

You will recall that under section 6 we made it an offence for the executive council or a member of the executive council to grant a contract to such a person, so that when I grant a contract to Mr. Van Horne I will be punished under section 6. The sense was that Mr. Van Horne, having lobbied for it in breach of this act, should also be punished as well. That is why section 17 is there.

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The irony is you have the case, for example, of Mr. Keyes or Mr. Ruprecht. There is a certain anomaly because theoretically they could be dealt with both under section 17 and under the general "the member shall not..." provisions of the statute. I think it is an anomaly that historically does not occur very often. Maybe it does, I do not know. Maybe I am going to learn about this.

That is all I have to say, except to draw your attention once again to our very short discussion papers and the various proposals for amending the statute that were raised in the speeches, which you may want to consider when you get to clause by clause.

Mr. Breaugh: I have one brief comment on this. It goes back to my concerns about the appropriateness of fines. If someone gets a \$50-million contract through this process, a \$5,000 fine is like a parking ticket. That is my problem. I do not know how to structure an appropriate level.

Hon. Mr. Scott: Neither do I.

Mr. Breaugh: It certainly appears to me that if someone were dealing in that kind of government contract, which is not that unusual--

Mr. Morin: It becomes a licence.

Mr. Breaugh: --a \$5,000 fine becomes a licence to practise your trade.

Hon. Mr. Scott: Let me make two points. Under section 17, you can increase the level of fines, but we are always going to be in the hands of the judges on the outside limit of the fines. I have no feeling about the propriety of that level one way or the other. I hear what you say and if you want to amend it, I have no major difficulties with that.

With respect to fines and compensation penalties against members, Mr. Breaugh in the House attacked in a very gentle way the proposition that there should be fines for the members. His theory was that such penalty falls unevenly on various members. A fine of \$3,000 on a sitting member of the House who happens to be rich is peanuts. If he happens to be poor, it may be Christmas and he cannot afford it. He made the case that fines have that unequal impact. He also made the case, if I read him right, that there was something improper about a fine because either you did something minor and should be reprimanded or you should not be there at all.

We looked at that and we concluded that he was right on that score. We

would propose, subject to what the committee says, to withdraw fines and compensation payments from the penalties under the act.

There is another reason for doing that. If we propose to fine somebody, there would be a real charter question as to whether the Legislature of Ontario has that power. It is acknowledged that we have a power to deal with our members about how they can vote, whether they can sit and whether they are qualified or whether they should be reprimanded, but there is a very real question about whether the Legislative Assembly has the power to impose fines on the citizens of Ontario, even if the citizens happen to sit in the Legislature.

That is in the discussion paper and I will be glad to hear your views on it.

Mr. Breaugh: Another moral victory.

Hon. Mr. Scott: Another moral victory.

Mr. Chairman: What we will have now, with your permission, is Dr. Bryden, if you wish to come forward. Any other questions that you have for the Attorney General can be held until tomorrow.

Hon. Mr. Scott: Dr. Bryden, I will be back in five minutes, but I hope you will go ahead.

Mr. Chairman: Dr. Bryden, it is good to have you before the committee. As members know from the agenda, Dr. Bryden is professor emeritus of political science at the University of Toronto. He is otherwise known as Mr. Marion Bryden--without trying to be flippant, Dr. Bryden.

Mr. Philip: And a former member of this House.

Mr. Chairman: And a former member of this House.

DR. KENNETH BRYDEN

Dr. Bryden: I am sometimes referred to as her father.

Incidentally, in case there is anyone who does not know what the term "emeritus" means, it is that I have been promoted out through the top. In other words, I am retired.

I was once a member of this institution, as some of you may know. To begin with, I represented the former Co-operative Commonwealth Federation and then I represented the New Democratic Party after it was formed in 1961. I decided there was too much hassle and work, so I did not run again in 1967. However, as the chairman has noted, I am married to a member of the Legislature, who has been a member since 1975.

No doubt on that basis, if this bill passes, as undoubtedly it will in some form, I will have to bare my soul to the commissioner. Notwithstanding what the Attorney General said in the House--no doubt with tongue in cheek--it will not be a matter of any embarrassment to me at all. I will be glad to show him all the records, income tax and everything else. I am sure it will not take him very long to go through the whole thing. I suppose I have an interest in this legislation from that point of view, but it is not on that basis that I am appearing here.

Let me also say I do not put myself forward as an expert on conflict of interest. If anyone wanted to find an expert from the political science point of view on this subject, the obvious person would be Kenneth Kernaghan of Brock University. I am here as an interested and concerned citizen, one who I think has some information, some knowledge of these subjects and also some capacity for logical thinking.

I consider this to be a very important matter in a democratic system. I regret there are not other citizens who have come forward. I think possibly the time when the invitations were issued may have had something to do with it, but unfortunately it is not a matter that engages the attention of many citizens until there is some scandal or alleged scandal that hits the headlines. It is not in that context that I want to discuss it.

As some of you may know, I have already expressed myself publicly on this issue in a letter that I sent, let me say simultaneously. The two letters went in the mail to two of the three Toronto newspapers on the same day. They did not publish them simultaneously. Those letters, of course, were necessarily brief. If you want to get a letter in the paper without it being slaughtered, you have to make it relatively short. So I am really wanting to elaborate on what I said there and add another point that I did not think I would take the space to deal with in the letter.

I am really going to raise three points. Two of them were in that letter in an embryonic form, and there is one other that I will come to at the end that I did not include in the letter.

By way of introduction to general comments on what I am going to say, I want to say that, in my view, appearance of conflict is integral to the definition of conflict. It is given equal status in the Parker commission definition with actual conflict and, in my understanding, that is in accordance with tradition. That is the way this matter has been traditionally viewed. Appearance is equally important.

As I read this bill--I do not claim that I necessarily have mastered it, but I read it several times--to put it bluntly, the appearance side of conflict of interest goes down the drain. It is just not there. From that point of view, I think the bill is flawed in a material respect, even though it has many desirable features. I am going to be negative this morning because I do not think you want me to give a recitation of all the things that I think are good in the bill. I just want to call attention to things that I think are less than good.

Two of the three points I want to raise with you arise out of that consideration. I will deal with those two first. The first one is the one on which I am going to spend the most time, not necessarily because I consider it the most important, but only because I can deal with some general matters while I am dealing with this and then I will not have to repeat them in the next point.

My first point is that although ministers are restricted in important respects by this bill, and especially by section 7, they are not required to divest themselves of assets, the position of which could decidedly create an appearance of conflict. Instead, there is a provision for full disclosure. I will come back to that in a moment. That is only part of the story.

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Also, as far as business interest is concerned, they can place it in a

trust. It is now being called, as I listened to the conversation in the last two days, a management trust. It is true they cannot interfere with that trust and with the management of the trust, but they know exactly what is in it, so they know exactly how it is being affected by government decisions. Then, of course, they have other assets, which as I understand from what the Attorney General just said a few minutes ago, that simply can continue to be administered by the minister himself.

Having made that introductory comment, I want to change the direction a little bit and raise another point which is related. I will come back to this point in a moment. In discussing this matter in the House, the Attorney General did me the courtesy of referring to my letter. I was pleased to note that he had even noticed it. I missed it myself in the Star, but he had seen it apparently. He asked why I wanted to restrict our investment to ministers and he suggested, no doubt with tongue in cheek, that he I was trying to protect what he described as my former colleagues in the official opposition.

Let me say, Mr. Chairman, none of them are my former colleagues. All of those Young Turks came in after I left the Legislature, so I was not ever a colleague of any of them in the Legislature. Anyway, the last thing that was in my mind was protecting them. It is my impression--admittedly, it is just an impression--that if they dumped all their equities on the market simultaneously, the market would not even have noticed that anything had happened. They certainly would not precipitate another black Friday. As a matter of fact, if I had in mind the convenience of anyone, it would have been more the convenience of a very much larger number of private members on the government side of House, who I think may not feel that they should have to divest assets and I do not really see any reason why they should.

At any rate, the Attorney General suggested in that part of his speech that private members are also involved in decision-making, just like cabinet ministers are. Technically, that is true. There are occasions when they may have a natural decision-making power, but surely the decision-making function of private members is in a totally different order of magnitude from that of cabinet ministers. In the case of the private member, it is marginal and intermittent. In the case of the cabinet minister, it is central and continuous. This is particularly true if you take into consideration the implementation side of legislation as distinct from the making of legislation, and it is in the implementation where conflicts most often arise. That is a function of cabinet. It is not a function of private members.

There is an important distinction to be made here. The Attorney General made his comments within a context of the speech in which he emphasized the need to draw lines of demarcation. He did, in fact, draw lines and this bill draws lines of demarcation between cabinet ministers and private members in other respects. I cannot see why it is not reasonable to draw such a line in the case of divestment.

However, let me say further I really have no great strong feeling about this at all. If I have to choose between drawing a very broad line that includes all the private members and having no line at all, I will definitely choose the very broad line. As I suggest, the matter is particularly urgent with respect to cabinet ministers, and that is why I concentrated on that in my letter.

Having said that, let me get back to the point I was making that ministers can have assets that can lead reasonably to a potential conflict of interest. We can have a situation of a minister sitting at a cabinet table

week after week, participating and certainly knowing what is going on, getting the minutes and getting the record of what goes on and knowing exactly how his private interests are going to be affected by the decisions of cabinet.

"Well," says the Attorney General and many others, "that is true, but this bill provides for full disclosure." That is a commendable feature. I am not denying that, but I do not think it is enough. Have full disclosure and then if the minister feels he has a conflict of interest or if the commissioner advises him that he has one, he can declare his conflict and withdraw, or using Parker's \$64 word, he can "recuse." I had never heard of that word before I read the Parker report, so I was tempted to use it.

Hon. Mr. Scott: It sounds obscene.

Dr. Bryden: Maybe it is; I do not know. As I say, I had never heard of the word before, so I am not dead sure what it means.

At any rate, on this point, I want to make three comments. Some of them were comments that were raised by members of the committee in discussions here earlier in the committee proceedings--not all, but some. I am just going to run down them anyway.

First, I do not think the issue is that simple, just to declare and withdraw, because policy decisions are commonly part of a larger whole. You cannot just take out one instant and say, "I have dealt with that," and therefore the matter is dealt with. Withdrawing from a specific decision does not necessarily preclude broader influence on the whole broad policy issue from which that specific decision derives.

Let me take an example that the Attorney General gave yesterday. He said a minister with large holdings in mining companies would not be an appropriate Minister of Mines, and I agree. Let us say he sits at the cabinet table as the Minister of Municipal Affairs. I would say that is a very doubtful proposition. He would be sitting there, and then maybe on a specific decision he would declare a conflict and get out. But he is there as an influence throughout all the discussions, other than that specific one. That is my first point.

The second one, which was referred to at some length by Mr. Sterling, is how are we to know that a cabinet minister has declared his conflict and withdrawn from the proceeding? We will be told. The Premier or the secretary of the cabinet will announce it, if it is necessary, and it will be in the record that the Attorney General referred to.

One does not have to assume that the Premier, the secretary of the cabinet or the record is false or that these people are lying. I would never suggest that, even if I thought it was true. We do not have to suggest that. Whether or not they are telling the truth is not the point. The point is that in a matter as important as this, the public--and that includes the media--has a right to see for itself what has happened. They should not have to rely on secondhand information. They should be able to see it for themselves. If they do not take advantage of the opportunity, OK, that is it, but they should have the opportunity.

As Mr. Sterling pointed out, there is a vital difference between cabinet ministers acting in cabinet and members of the Legislature acting in the Legislature. The Legislature is open, and those people up behind the Speaker's chair can be peering down and seeing exactly what is going on, but they cannot

do that at a cabinet meeting. I suggest that if they cannot, then declaration and withdrawal are not sufficient.

My third point on this is that this proposal goes flat in the face of a fundamental principle of cabinet government, and that is the principle of collective responsibility. Any elementary textbook on cabinet government will tell you in the first chapter that there is both individual and collective responsibility by cabinet ministers. They are individually responsible for the decisions that they, in their role of ministers of departments, have made. They are also collectively responsible for all of the decisions made by the cabinet. How can they accept collective responsibility if they have ducked out? I will leave that with you.

1230

The public disclosure provisions, as I said, are good. I do not think anybody would dispute that. But without divestment, they can have the perverse effect of arousing rather than allaying public suspicion.

Let us take a hypothetical example. The public knows that minister A holds shares in company X. It has also been announced by the cabinet that, as a result of a cabinet decision, certain benefits are going to be given to company X, probably, undoubtedly, quite legitimately, and those are going to enhance the value of minister A's shares. I suggest to you that the appearance of conflict is inescapable in a situation like that.

I think in the current thinking on this subject, there is far too much stress being put on declaration and withdrawal. It is going to become a sort of standard practice. I suggest to you that it is properly used as a last resort where a minister or a member is inadvertently caught in a conflict that he or she could not possibly have anticipated. Then that is the only escape. But to make it a general practice that we hold assets that can very well create conflicts, but we will get out from under by declaring our interest and withdrawing, I think is an abuse of that important principle. It should not be used as a regular procedure, as an escape for a minister with holdings that have a potential for creating a conflict. The only answer, as I suggested, is divestment.

I do not think that means the minister has to be picked as clean as a jay bird, as Damon Runyon might have put it. The minister can still hold many assets where there is no reasonable basis for believing that a conflict would arise. As a basis for arriving at those kinds of assets, I would suggest that you could consider the exemptions in section 12. Even if the minister wants to engage in the market, he, or any member, could do so under that section through open-ended mutual funds. He could hold government instruments or government guarantees. There is a wide range of investment opportunities available there, which could well be a basis for exemptions on this other matter of divestment.

If you want to approach the subject from the other side, then what are the assets of which a minister must divest himself? The Attorney General in his discussion paper mentioned that right now it is practice, as a result of decisions of the Premier, on the one hand, and the commissioner, on the other hand, that ministers have been asked to divest themselves of land holdings and of equities. As I understand it, from what I read in the paper, one minister was quite fortunate to be told by the commissioner--the commissioner did him a favour to tell him--to get rid of his equities. He got rid of them just before the big crash in November.

Holding equities is not necessarily an inherent right that one must have. You may be just as well out of the stock market. At any rate, in terms of the minister, I do not think he should hold any. I do not think he should hold any land. In fact, I would go a little further and say I do not think he should hold any real property.

If that is what is happening now, why not write it right into the bill? Why not put it there and perhaps supplement that with a further power of the commissioner to suggest further divestment that might occur in some exceptional situation, which one could not anticipate in drafting laws. I do not think there should be any real problem in providing for divestment in the bill, especially for ministers, and if you want, for all members, but certainly for ministers. That is my first point. The other two I will make briefer because I covered some ground here that I do not have to cover again.

The second point is, as I read this bill, there is nothing in it that precludes a minister's spouse from entering into a profit-making business arrangement with the government or a government agency. If I am wrong on that, say so and then we will save quite a bit of time because I will not say anything about it. That is the way I read it. There is absolutely nothing to stop it.

Hon. Mr. Scott: I did not hear what you were saying, Mr. Bryden.

Dr. Bryden: I said there was nothing in this bill that precludes a minister's spouse from entering into a profitable business arrangement--it does not matter if it is profitable; a business arrangement for which he gets paid--with the government or government agencies. As a matter of fact, I believe such a situation already exists with respect to the present cabinet. However, I am not interested in getting into personal--

Hon. Mr. Scott: One spouse, I think it has been disclosed, has a contract with the Ministry of Education to correct exam papers.

Dr. Bryden: I do not want to get into any individual cases, and I appreciate your correction because I do not want to create any impression that I think this is a widespread abuse, but certainly under the proposed law it is quite possible, as I see it.

The mind boggles--at any rate, my mind boggles--at the potential for conflict that can arise from this possibility of ministers' spouses entering into contracts and other business arrangements with the government and government agencies. This is especially true in view of our present family law, which has already been referred to and which everybody is familiar with, whereby the minister benefits equally with the spouse from any benefits that may arise from that arrangement.

In fact, and I think Mr. Sterling mentioned this too, I would suggest that consideration should be given to seeing how this possibility jibes with section 10 of the Legislative Assembly Act. That section--I copied a few words out of it--provides that a person may not be a member of the assembly, and this applies to members as well as ministers, if that person has a contract or other arrangement for which he is paid, and that has been entered into directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person.

I am not a lawyer, but I would suggest that you should look at section 10 of the Legislative Assembly Act. But we should not rely on that. Why can it

not be written right in the bill that ministers' spouses--in fact, anybody's spouse; members' spouses either--cannot have contracts with the government. There are all sorts of business opportunities in this province. You do not have to deal with the government.

That is my second thought. Now I will go on to the third one, which was not referred to in my letter.

Under the bill the commissioner is available, among other things, to advise ministers and other members on the actions they have to take to comply with the bill. In other words, he is a watchdog, but he is a friendly watchdog. His aim is to be helpful and to bite only if that is absolutely unavoidable, and I think that is the right approach. I think he should be more an adviser than a policeman, although he may necessarily have to be a policeman on occasion.

What is not desirable, in my submission, is the further provision that if a question arises as to whether a member has complied, then in effect he becomes the judge of the case. How can he be an impartial arbiter when he has already made up his mind on the case and has expressed his opinion on it? It is a waste of time going to him; he has already said what he thinks.

It seems to me there should be some provision in this bill for a genuinely independent arbitration--I do not care by whom; I am not suggesting by whom, but some genuinely independent arbitration--where a question arises as to whether or not a member is complying. I may say this cuts both ways; it is not only when somebody makes an allegation that a member has failed to comply, but also the member himself may have a dispute with the commissioner as to whether or not he has to do so and so in order to comply. In either case, I suggest that there should be an appeal to somebody who has not previously been involved in the matter.

1240

I would make one caveat. If a member has been acting in accordance with the advice of the commissioner, then clearly that member should not be penalized, even if it is subsequently decided that the commissioner's advice was incorrect in whole or in part, but the arbiter's decision would then become a guide for both that member and all other members as to future conduct.

Those are the three major concerns I have with this bill, which in my opinion are serious flaws. Everybody keeps saying this bill is a step forward. I think, in view of my concerns, I see it as a step backward in important respects.

Ten years ago the blind trust was the in thing. That was the way to do it. Now all the pundits are saying blind trusts are not worth anything. I think they exaggerate, but let us accept that as the fact. Now disclosure is the in thing. That is going to be the answer to the problem. I think any of these individual solutions is not going to be the answer. Disclosure is important, but it is not enough. Furthermore, it is not nearly enough if it is complemented by a declaration and withdrawal. Declaration and withdrawal, I suggest, should be regarded as a last resort.

The important complement to disclosure is divestment. I suggest that without serious divestment provisions in this bill, it will in time gradually fall into disrepute as the public has a perception that ministers do have interests that are affected by cabinet decisions. I see that falling into disrepute just as much as the blind trust has done.

My suggestion is that this particular question of divestment needs much more consideration than it has been given here and that the definition should include the concept of appearance as well as the actual conflict.

I appreciate the time you people have taken. I know you have a lot of other things to do, but I wanted at least to get these things off my chest.

Mr. Chairman: Thank you, Mr. Bryden. I think there are one or two questions that members want to ask.

Mr. Polsinelli: Mr. Bryden, I want to thank you for taking the time to come before the committee and to prepare your presentation. I am sure that all members of this committee appreciate your efforts in giving us your experience and your thoughts on this bill. I have some questions with respect to your presentation.

It seems that, as I understand your presentation, one of the major shortcomings of the legislation is that it does not address the appearance of conflict. You went on to say that the appearance of conflict could be addressed by divesting the interest that would create the appearance of conflict. Further in your presentation you indicated that ministers, however, could hold assets that would create no appearance where a reasonable man would determine that there is a conflict.

I think some of the examples you used of the items you think a minister should not hold are, for example, interests in real property, or no real property, no land. You indicated that perhaps some of the things he should be able to delve into are those exemptions under section 12 of the bill. I take it that things such as registered retirement savings plans and mutual funds are the types of items you would indicate should be held by a minister.

Dr. Bryden: May be held.

Mr. Polsinelli: Do I understand that aspect of your presentation correctly?

Dr. Bryden: I am not wedded to the exemptions in section 12. I am merely suggesting that I think the Attorney General, in his submissions yesterday and today, emphasized there are some things that are so far out on the fringes that they do not matter. There are others that are right central. What we should be looking at, whether it is the exemptions to section 12 or not, are the things that are so far out on the fringes that they do not matter.

Mr. Polsinelli: I take it then that the major thrust is that the minister would have to make almost full divestiture of his assets.

Dr. Bryden: Well, no.

Mr. Polsinelli: Once you are looking at items that would create the appearance of a conflict, who is going to draw the line? The best line to draw is a clean slate.

Dr. Bryden: I suggest that it is a function of the legislation. If we are going to have legislation on this issue--we have not in the past but I agree with the principle--it is the function of the legislation to lay it down as clearly as it can and to say either that these must be divested or these do not have to be divested or both, and perhaps leave an area where the discretion of the commissioner would operate. I just leave this wide open.

Mr. Polsinelli: Right.

Dr. Bryden: I am encouraged in this by the suggestion from Mr. Scott that in fact they are already doing this. I commend that.

Mr. Polsinelli: Still dealing slightly with divestiture, you talked a bit about a minister's spouse. Do you feel that a minister's spouse should also be required to divest?

Dr. Bryden: There is a nice question. In a situation where you have the spouses living in a normal marital arrangement, what applies to the minister should apply to the spouse.

Mr. Polsinelli: Then you would of course think that there should be a different line drawn under the bill between the ministerial responsibilities and ministerial requirements and those for private members.

Dr. Bryden: I suggested there is a logical basis for this. I do not care whether it is done or not. It is no skin off my fingers whether it is done or not.

Mr. Polsinelli: I have one last question because I do not want to take up too much of your time. You indicated quite clearly in your presentation that spouses cannot have contracts with the government. I do not think you said "should not." What about spouses who presently work for the government? Should they have to resign their positions if their husband or wife gets elected?

Dr. Bryden: That is a point I had not thought of. I was thinking more of contracts. That is a contract of employment, of course, but I was thinking of commercial contracts. Sure, there may be an area here where you have to make distinctions. I would say it would be legitimate for a spouse to be employed by the government. To have a \$50-million contract to build this, that or the other thing is a different thing from having a \$25,000 a year job in my opinion.

Again, as the Attorney General keeps emphasizing, it is a matter of drawing lines. I would have to take another look at all this to say exactly where the line should be drawn there.

Mr. Polsinelli: Thank you again for the benefit of your experience. I appreciate your coming before the committee.

Mr. Breaugh: I want to focus on one area where you have raised one more conundrum. I am not quite sure how we deal with this. The purpose of the exercise was, by law, by statute, to lay out the groundwork for what is a conflict, how you handle that, what is acceptable behaviour and what is not. One of the thorniest problems I have now is that we have said a royal commission is far too expensive, too long, too costly and does not do what we want to do. We have said that a legislative committee has great difficulty in gathering up the facts. Never mind making up its mind about what is right or wrong; the gathering of information in this circumstance is very difficult for it to do.

1250

The problem is that we have opted now for a commissioner. The commissioner will advise the cabinet and the members. By the time we are

through, the commissioner may be able to say, "You must divest of this interest." Then, when something goes wrong, who looks at it again? The commissioner.

Here is my problem: This is the person who gave you the advice in the first place. If you did not follow the commissioner's advice, I could certainly see where the commissioner would say: "You jerk, you did not do what I told you to do. You have been a bad boy. Get out of the Legislature." However, if the commissioner gave me some advice and I did all that and there was still an allegation of a conflict, is the commissioner going to say: "I gave him bum advice a year ago. I did not do my job in monitoring what he should have disclosed. I should have told him to divest his interests in that company"?

The commissioner is in a rather difficult spot. He is at one time the adviser to the member. He is at one time kind of the member's boss about what assets he can or cannot have. The next time you see him, he may turn up to be your judge and jury. I appreciate that the model being suggested here is something that we will have to work with a little bit, but I want to be able to try to say that part of the role is to advise the members, part of the role is to set the standards the members must meet. I am struggling with the concept that when a conflict is alleged, we go back to the same person to judge.

Dr. Bryden: No, I think that is completely wrong and it is meaningless. What is the use of asking the commissioner to rule on something on which he has already ruled? That is silly. My suggestion was there should be an independent arbiter whenever a dispute arises. Perhaps it is a dispute the other way, where the member says: "You are wrong. I should not have to divest this," or whatever it may be. There should be an independent arbiter, but I do not think it should be a committee of the Legislature and I do not think, except in very special cases, it should be a royal commission. It seems to me it could be something like the umpire under the Unemployment Insurance Act, a judge of a superior court who could be called in to rule on the thing if there is a dispute.

Mr. Breaugh: One of the things I had thought about that in a sense moves in the direction I want is that if it were the office of the commissioner that provided the advice to the member, and when you needed a ruling on something it went to the commissioner and there was some mechanism struck which said, "The commissioner's official ruling is...", that might help me a little bit. It does not quite get me around the problem that in a perceptual sense, it will be the one person, the commissioner always, who advises even though it might be legal counsel, somebody who works in the office or something like that. I am struggling to find some mechanism which carries with it the perception that it is not the same person advising, directing and then adjudicating afterwards, because it seems to me we have to pull that apart somehow.

Dr. Bryden: That may be a possibility but then you put the commissioner in the position of being what I have described as the independent arbiter.

Hon. Mr. Scott: There is an interesting example if you look at the Freedom of Information and Protection of Privacy Act. Under the freedom of information act, when a citizen requests information, after it gets beyond the minister stage, the Information and Privacy Commissioner is obliged to attempt to mediate between them; that is, he tries to encourage the ministry to cough

up the information. If he fails, he then becomes the judge. I have no doubt that his mediation efforts succeed more often not and will succeed more often than not, perhaps because he is going to be the judge. The conflict between these two roles it seems to me, between mediation or advising and deciding, is more theoretical, more sort of textbook than real. We have lots of examples. The freedom of information commissioner is one where the two roles, perhaps with different people in the office, as you suggest, Mr. Breaugh, are performed.

Dr. Bryden: In this case, we are not talking about mediating and deciding. We are talking in effect about deciding at two levels. If you give advice to the member and say, "It is OK to do this," you have made a decision on that matter. You have not mediated and tried to persuade somebody to do something. You have said it is OK and he, as I suggest, has a perfect right to act on that information. But then if a dispute arises as to whether or not his actions were proper, I think it should go to somebody else.

Hon. Mr. Scott: Professor Bryden, if you are going to give the member the freedom to act on the information on the certificate that the commissioner gave him, why is there any conflict? When the complaint comes before the commissioner, what the member did will not be regarded as improper. Because he had a certificate, he cannot be required to vacate his seat. Why is the act of deciding whether what he did was improper going to be any different when it will have no consequences?

Mr. Breaugh: I think it is best expressed this way. If I am on the visiting team and when I go to the arena, the coach for the home team is also wearing a striped shirt and blowing the whistle, I will not think this is fair. I may register an objection to it.

Hon. Mr. Scott: That is why people confide in judges; it is one of the things I really worry about. You get the striped jersey and everybody thinks you are capable of making all kinds of decisions.

Dr. Bryden: Dealing with your point, if the commissioner is given his certificate, then what is the use of raising the issue? You might as well just eliminate this provision of referring matters to the commissioner, because if the member has the certificate, then surely the commissioner is not going to pull the rug out from under him.

Hon. Mr. Scott: I think you have to consider there is every possibility that the facts the member put before the commissioner may not be all the facts. There may be additional things the opponent wants to tell the commissioner that the member did not. If there are no such differences, if the member's complaint is precisely the issue of fact that the member himself took to the commissioner to get his certificate, then there will be no change; but if there are new facts, and if you have a commissioner with some kind of integrity, he is surely capable of judging whether or not those new facts make a difference. Certainly, you would expect a man in a striped jersey to do that.

Dr. Bryden: The commissioner is given a role here as a sort of legal adviser. Would you say it would be proper, if I had a dispute with my neighbour, that the neighbour's lawyer should then become the judge?

Hon. Mr. Scott: You see, Professor Bryden, I do not regard him as a legal adviser; I regard him from the beginning as a decider, in the sense that if I as a member come to him and ask for a decision--you can call it advice if you want because he cannot compel me to act on it--he is really not giving me

advice the way a lawyer or a doctor would. He is deciding. He is saying, "If you do this, you are in trouble; if you do this, you are not."

Perhaps our perceptual difficulty is that we begin by thinking of him as some kind of confidant, and he is not that. He is from day one a decider. It is just like election commissions. They have the power to decide things, and sometimes they decide them in advance. They decide, for example, how many signs we can buy and what the return dollar to be assigned to them is. They decide that before I go to buy my signs in the election campaign. If a complaint is made after the election that I had too many signs returned for too much credit, they will have to pass on the same issue again exactly. But no one regards them as advisers. They were from the beginning the deciders.

I think you should accept the notion that this commissioner is not advising you, he is telling you what to do. The only thing he cannot do is make you do it, in the sense that you are your own boss and you can vote if you want to.

Mr. Bryden: That was the point I made when I made my brief. He is a decider, and I do not think the decider should pass judgment on his own decision. I do not think there is any point pursuing this, Mr. Chairman. I am a layman, and I put a lot of emphasis on the principle that a person who hears an appeal on a matter--

Hon. Mr. Scott: Justice must be seen.

Mr. Bryden: --should be independent of any previous involvement. But you are a lawyer and a very distinguished lawyer, and if you do not think that is an important principle, I am not going to argue with you about it. Obviously, I would lose anyway.

Mr. Philip: I guess my suspicion is that two or three years down the road there are not going to be many decisions to be made. The reason for that is that a number of types of situations will have been brought to the commissioner; he will have come down with decisions; those decisions will have been debated in the House; and we will have come to some kind of consensus on the kinds of situations in which there is a conflict and those in which there is not.

1300

What we have is kind of a transition stage we are going to face for the next year or two until we decide, "Yes, if you do this kind of thing you are in conflict, or no, you are not."

The question then becomes whether you want some kind of appeal mechanism. I am not convinced that is necessary at the moment, but if you did want to go that route, you have the analogous situation on the human rights side. If the labour relations board, for example, makes a terrible muckup in the eyes of some citizens, they can always go to the Ombudsman. If you wanted an appeal mechanism, you might consider the Provincial Auditor as the other side of the Ombudsman when it comes to the finances of the province. I am not sure I want to go that route, but I am just saying that might be one of the routes you might want to look at.

One of the things I have some problem with in your presentation is the second part, that is, in relation to spouses. It seems to me from being around here for 12 or 13 years and knowing the spouses of the different members that

many of them have very independent careers, very professional careers. If I were a partner with you in a company that was, say, one of the best construction companies in Ontario, and suddenly I were told that my company, of which I am half-owner, can no longer compete in a free trading situation for building the domed stadium, for example, I would immediately take the government to court under the charter.

I think I would beat the pants off any government which said, as long as I have an equal opportunity, that my career should be restricted because my spouse happens to be a cabinet minister. I think the problem springs from whether tenders are set up in a way that is completely fair and open and whether they can pass examination. I think if you go much beyond that, you are going to get thrown out in the Supreme Court.

I think my spouse would feel very offended if she were told she could not accept the contract from the government, if she happened to be the best person for the right contract.

Dr. Bryden: I do not think you are any better qualified to second-guess the Supreme Court of Canada than I am, but I would suggest that under section 1, the provision would stand under provision 1 of the charter. But who knows? We would have to wait and see. All we can do here is do what we think is the best thing. The modern concept of marriage is that it is a partnership and they have to make accommodations to each other. If they are not ready and willing to do that, then that marriage is in trouble.

Mr. Philip: When you get married, though, you do not agree that the other person, somewhere down the line, having made other career decisions, is going to ruin your career.

Dr. Bryden: I do not think precluding government contracts ruins the career. There are hundreds of potential contracts out there.

Mr. Philip: What if I were into high tech, and the government is the only one in the business of letting out subway contracts, things such as that? Does that mean I have to completely end my career as an engineer and--

Dr. Bryden: We can take hypothetical cases until the cows come home and I am not going to try to discuss every conceivable possibility that comes up. All I am saying is that spouses have to make accommodations to each other and if they are not willing to continue to do that, then OK. That is a problem, but it is not a problem of the Legislature.

Mr. Chairman: I have one short question and then we will close, Dr. Bryden, and I appreciate your coming before the committee. You said earlier, and I think you were speaking about all members but you may have only been speaking about the executive council, that they should not hold any real property. A residence is real property. Are you saying they should not hold a residence?

Dr. Bryden: No. Thanks for correcting me on that. Certainly, I agree with the provision in the bill and elsewhere that real property held for personal residence or recreation is exempt, absolutely. I put this more to the executive council than to private members.

Mr. Chairman: Thank you very much for coming before the committee, Professor Bryden. The committee will meet again tomorrow morning at 10 o'clock.

The committee adjourned at 1:05 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
MEMBERS' CONFLICT OF INTEREST ACT
WEDNESDAY, JANUARY 13, 1988
Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Klein, Susan, Legislative Counsel

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

From Municipal World:

Smither, Michael J., Editor

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

From the Bridlewood Residents Hydro Line Committee:

Hunter, Judy, Chairman

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, January 13, 1987

The committee met at 10:35 a.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: I call this meeting of the standing committee on the Legislative Assembly to order.

We have with us today Michael Smither, who is the editor of Municipal World. Mr. Smither was very much involved in the drafting of the conflict-of-interest legislation for the municipalities, and we are very honoured to have you with us today, Michael. You have obviously seen the bill, you have studied it and you may want to have some comments.

We originally had Judy Hunter from Ottawa scheduled to appear before us at 10 o'clock, but obviously she has been held up for some reason. I hope she will be with us later this morning. So Michael, if you want to go ahead and make an opening statement, then we may have questions on some things.

MICHAEL J. SMITHER

Mr. Smither: All right. Thank you. It is a long time since I have been in this room before a committee. Thank you for inviting me.

Whenever I look at a piece of legislation, I always first of all try to discover what the philosophy is behind it and what the objectives are. Then you can place it into perspective. When I look at this bill, I think it is fairly clear. The intention is to provide clear direction to the members of the Legislature--and I emphasize the word "clear"--on a standard of conduct and, if that is done, to eliminate to a very large degree the partisan and other interplay that would occur where you have uncertainty. Where you have those two objectives met, then you have an enhancement of the public perception of the politician and of the Legislature. I think reasonably that is what is intended here, and I commend you for it.

My principal concern is that if the first objective of clarity is not met, the other two go down the tube very quickly. I suggest that this bill is not clear and has not been clear from the beginning. It has been improved by the amendments made so far, and I am sure the committee realizes that Bill 160, the original bill, and Bill 1 are not the same bill, that it has in fact changed.

I look down the order in which things have occurred, certainly as far as I have been affected. It goes something like this: We had Bill 160 for first reading in November 1986. At that time I reviewed the bill. I had concerns. I wrote to the Attorney General's department. That was in December 1986.

I received a response by letter on January 22. I was not happy with the response. I understand that the person writing it would obviously want to defend the bill, and he is entitled to. I wrote an editorial in February 1987 criticizing the bill.

The bill was reintroduced as Bill 1 in November 1987. Bill 1 contains a number of amendments to Bill 160. Three of them affect matters which I had referred to in my letter and, as far as I can see, they are dealt with fairly well--certainly one of them, the one I had the major concern about. The section is completely rewritten into two sections and no longer presents a problem as far as I am concerned. That was subsection 6(1), which is now subsection 6(1) and subsection 17(1). That is a major revision. It has gone from 17 lines to 39. That was the section I felt was so bad it should come out of the act, and it has been rewritten, so I have no problem with that.

1040

I have no problem now with the definition of "spouse," which I was concerned did not meet the requirements of the Equality Rights Statute Law Amendment Act that you had before the House at the time you brought the first bill in. It has also been changed and, as far as I can see, has had regard to that, too.

I had concern also with the fact that the commissioner was making the regulations. The person who responded quite correctly pointed out to me that they were going to be approved by the Lieutenant Governor in council, which is perfectly correct. The bill has also been amended to indicate that.

Those are the initial concerns I had, or part of them. But it leaves the major concern I have had throughout completely unanswered, and that is the question of the scope of the bill. I think it is very, very important that the members be able to look at the bill and, on the face of the bill, know what the bill is requiring them to do. They should be able to see the scope of it, and I suggest that they cannot do that by any stretch of imagination. If you do not have clarity in that area, you are going to have major problems. Throughout the bill you have this lack of clarity.

I would direct your attention, ladies and gentlemen, to section 1 and the definition of "private interest." I know that the purpose of this committee is to ask me questions, but I would like to pose one to the committee. When you look at section 1, tell me what a private interest is. I challenge you to do that because I am confident that you will not be able to tell me what it is.

Section 1 defines "private interest" in a negative form. It tells us what it is not. It does not tell us what it is. I think that is a very bad start for the legislation because you simply do not know.

I asked that question. The question I asked is, is the intention to restrict the bill to pecuniary interest? Realistically, you have to know what you are dealing with. The answer came back to the effect that no, that was not the intention. The intention was to--let us see if I can find where I made my notes on this.

This is the response I got from the Attorney General's department when I asked the question, does the bill include only pecuniary interests? Is this your intention?

"The report of the legislative standing committee on public accounts pointed out that private interests are not confined to interests of a proprietary or beneficial nature, i.e. pecuniary interests. Therefore, the bill does not seek to restrict its application to pecuniary interests."

The question in my mind is, what does it include? The potential that it can include, to my mind, is pecuniary interests, which it should cover, and also nonpecuniary interests. I suggest that there has never been, to my knowledge, an attempt to legislate nonpecuniary interest. I think it would be so nebulous that you would simply never be able to pin it down, and I frankly cannot see any benefit by doing it. It can create boundless problems.

I shudder to think what would happen if you tried that at the municipal level, with which I am familiar, because everybody has bias in certain things, and you are bringing in bias. Now, at the municipal level, nonpecuniary bias is a consideration when there is a quasi-judicial capacity of the council, when you are holding a hearing of that nature, but only in those circumstances. When the law of that is applied, it is highly restricted. I suggest that it is very, very dangerous not to define "private interest." I strongly recommend that it be kept to pecuniary interest, because really that is all you are concerned about, so say so. Do not leave it wide open.

You also have provisions in here for insider information and influence. If you are not restricting private interest, then you are not restricting the application of insider information, nor are you restricting the application of influence. So in both of those areas you are dealing with something more than pecuniary interest and you are into the question of nonpecuniary bias. I suggest that is not what you are trying to do. If it is, then you have my condolences because you will never. You are going to waste an awful lot of public time and money in fighting over these kinds of things. I suggest that is not in the public interest.

So I think you really should be seriously looking at the definition of private interest and bringing it down to pecuniary interest. That is what the public and you, I suggest, are concerned with. It is very important.

The second point of some consequence--

Mr. Sterling: Could we ask questions?

Mr. Chairman: While we are on this point, maybe we could entertain some questions.

Mr. Sterling: I am interested in this area of nonpecuniary interest and also when you are talking about the different kinds of decisions that we are required to make. I am interested from the point of view that I guess the first charge or asking for an opinion came from me about the Attorney General (Mr. Scott) with regard to his role in a situation where the cabinet was acting in what I call a quasi-judicial role and an appeal from a joint board relating to a hydro line. I do not know if you are familiar with that.

Mr. Smither: I have some knowledge, but not enough, about that situation.

Mr. Sterling: This is the area where I find the legislation inadequate. The Attorney General withdrew from the first meeting of cabinet on this particular issue, but then involved himself at a later time. One of the problems, of course, with the hearings that the cabinet has is that they are in camera. They are not a public quasi-judicial hearing, while probably most of the hearings that municipal councillors are involved in are.

Mr. Smither: They have to be.

Mr. Sterling: In fact, if you stay for the next witness, you will see Judy Hunter, who is from the Bridlewood community where the hydro corridor is going through, and hear her grievance about that particular thing.

In defining the nonpecuniary interest, how would you describe it? Have you read Judge Parker's report in terms of apparent conflict of interest?

Mr. Smither: No.

Mr. Sterling: I recommend you look at that particular definition that he has used for an apparent conflict of interest in deciding what private interest is.

The problem here is that the Bridlewood community, which this committee will hear next, will say that there appeared to be a bias on the part of the Attorney General with regard to these hearings because he was a lawyer involved in the case he is dealing with, this particular issue.

Mr. Smither: Those facts are very complicated, because you are involved in a professional situation, you are involved in the particular office which is influential in that decision.

I have considerable concern, as I sense you do, about the fact that the act is not giving us a direction towards one particular thing. People may find circumstances in which they are objecting to an apparent bias, and if there was a quasi-judicial capacity involved, then there are rules against bias that would apply. I suggest that this act, in most circumstances, is not going to be or should not be contemplating that at all.

If a person is simply biased--and what politician, frankly, is not, and what person is not--how can you possibly-- When you include that, you unnecessarily complicate the issue and you may not always satisfy the public. You may get a public outcry saying, "It is being watered down."

I think what you are trying to do is establish a standard that is reasonable and can be lived with. I am concerned that you cannot live with this uncertainty. We are already seeing it and you have not even got past first reading.

I will take your advice and read that report, but I do not change my position that it should be pecuniary. We have to have a clear direction. We cannot have this vagueness. That is my very strong feeling.

On the question of vagueness, it brings me to the second point, the response I received and heard through the Caplan report as being one of the areas of concern. That is understandable. It prompted, doubtlessly, this legislation, yet in drafting this bill, the bill would not have cured that situation. That is the ultimate irony.

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There is another omission in the bill. The bill requires the disclosure of certain assets, liabilities and so on of the spouse and minor children. The bill also requires the member to disclose his or her pecuniary interest and sets out a procedure where there is a conflict of interest, but the bill does not link the interest of the spouse and the child to the interest of the member.

Maybe the argument can be responded to by implication. It is in the same bill, therefore it is implicit in it. I suggest to you that is an argument made after you have passed a piece of bad legislation and you are trying to interpret and extend it. It is a poor argument to be raised when you are in the process of passing it.

It is particularly dangerous when you go to the Municipal Conflict of Interest Act and you find that the matter is dealt with in there. You get a situation where the Legislature has spoken in one act of a similar nature on an issue and left it out of another one. There is this further implication that the Legislature intended to do so.

If you read section 3 of the Municipal Conflict of Interest Act, there is a clear attempt made to link the interest of the spouse to the interest of the member. I will read it to you:

For the purposes of this act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member"--and I think 'if known' is very important--"be deemed to be also the pecuniary interest of the member."

That is in there so that whenever you refer to the interest of the member, you are referring to the deemed pecuniary interest of the member also.

The same linkage applies in subsection 2(1) of the act on indirect pecuniary interest. It is a very important structural thing in a statute, if you are combining a number of things, to link them together. So when you deal with the member's interest, you deal with the spouse's interest too.

This act does not do that. This act requires the disclosure in one part, but if you look at section 2 and you look at section 8, you will find only a reference to the interest of the member, which is quite proper if you have the other subsection in there saying, "The interest of the spouse and minor child is deemed to be the interest of the member." If you do not, I suggest to you the act is saying it is only the member's interest that requires disclosure and not the spouse.

Mr. Chairman: So you are saying it is not even implicit in the act.

Mr. Smither: I can be argued to be implicit, but against the implication is the other argument that the Legislature left it out because they intended to leave it out, because where they intend to put it in, they have put it in.

I think this is a good time to put it in. It is a simple matter to add another subsection somewhere in the statutes saying in effect, "The member's interest includes" or "The others are deemed..." Just pick the wording out of the Municipal Conflict of Interest Act, section 3, and add it to the statute and you have that problem clarified too. Also, the member reading the act

knows exactly what the act is requiring them to include.

Mr. Sterling: Could we ask the Attorney General whether that was intended or is that an oversight?

Mr. Offer: I listened closely to your argument.

Mr. Chairman: Mr. Offer is the parliamentary assistant to the Attorney General.

Mr. Offer: It is certainly not only the intent but it is the position that this particular legislation and the definition of private interest as it is now included in the legislation would include or would not exclude the interest that a member might have in a spouse's assets. So it is the position of this legislation that certainly a member could find himself in breach of this agreement with respect to acts which would affect his or her spouse's assets. That is why the definition does not exclude the spouse's assets.

It follows that this legislation does include the interest of a member's spouse. Accordingly, members could find themselves in breach of this agreement if they acted in a fashion that would affect not only their particular interest but their spouses' interest.

Mr. Smither: I appreciate that. That is implicit. I realize that is your intention. I am saying the act does not say so. You have a negative definition of "private interest" which makes no reference to "member" and makes no reference to "staff." You have a direction in sections 2 and 8 directed at "the member" and makes to reference to "staff" or "minor child." I recommend that you add a subsection that says it. I think you need it.

Mr. Chairman: Mr. Offer, do you want to respond to that?

Mr. Offer: We have noted your concern. It seems from what you are saying that the concern you have is in the definition of the term "private interest," in that it is something which is exclusionary. Our position is that the definition of "private interest"--I know what you have been saying with respect to its being called "pecuniary interest" and we heard some discussion yesterday that maybe it should be further pinpointed by adding between "private" and "interest" the word "economic." This might help in determining a member's obligations in a clearer fashion, but it is certainly our position that a member could find himself in breach under this agreement if he acted in such a way that would affect the private interests of either himself, his spouse or his minor children.

Mr. Smither: I agree with you and I do not have any quarrel with that at all. It is clearly what you are trying to do, but I still suggest you have not done it without including that clause, particularly when you have had it in another statute.

As to adding the words "economic interest," I would say to you that "economic interest" has not been tested in the courts. We would not know then what it meant. There is a whole body of law that says what "pecuniary interest" means. Why introduce another language without the benefit of something a member can at least look at and say, "This is what the law is saying"? Why again introduce another element? I raise that question.

Mr. Offer: I will certainly take note of your comments and so has

the staff. To go back to Mr. Sterling because that is how I was brought in, I think it is clear from my response that certainly it would attach not only to the member but also to the member's spouse.

Mr. Chairman: OK. Good point. Mr. Smither, are you essentially finished?

Mr. Smither: Those are basically the areas I had. I also noted that the act refers to "influence." There are certain sections of the Criminal Code dealing with "influence" and there is no linkage between that either. There does not necessarily have to be. I am just thinking that in instructing the members of the Legislature on this statute, when the matter is addressed I think they should be directed to the fact that the Criminal Code also contains stringent prohibitions against interest. When you are going through your, I presume, instructional process, they should be aware of the fact they are also subject to that as well as to this statute. Those are pretty well the reactions I have.

Mr. Breough: I appreciate your comments because you have made a career of being very exact in what legislation should mean and what the words mean. I am in agreement that the proposal to define "private interest" in this way is certainly rather unusual and basically says these three things are not "private interest" but anything else could be. It almost appears to me to be an attempt to fuzzify, if I can use that brand-new word, the whole thing so that there is never going to be a clear definition of what is a private interest and the fact it is so unclear means it will never get applied; it will never get properly interpreted.

I am in general agreement with the notion that you try to use the words "pecuniary interest" because there is a body of case law out there that defines that and I think we do clearly mean that when you have an economic gain, that is going to bring you into a conflict. I like that in terms of its clarity, but I also need something else which covers all the other conflicts that could perhaps not involve a direct financial gain for the member, his spouse or his minor children. To be blunt, I am not real happy that the cabinet would make their friends stinking rich any more than themselves stinking rich.

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Perhaps it simply means we clarify "pecuniary interest" and then we move to a better definition of what other circumstances, so that it is clear precisely what we are chasing here, or are you advocating the point of view that you just stick with the known entity, that you identify and use the words which other statutes have used and for which there is a fair amount of case law out there, so we are only chasing the one thing in terms of a conflict and we let the others get picked up by other criminal statutes and things of that nature?

Mr. Smither: On the intent of the draftsmen, I think the draftsmen did a good job in the sense that they were asked to cover all circumstances. They did; by having the negative definition they have covered the waterfront. My concern is that you cannot live with that situation. I think that if you have to have more than "pecuniary interest" in the statute, you confine this part of the statute to "pecuniary interest." You either have another statute or another part of the statute which particularly addresses the other circumstances you are having concern with and treats them, if necessary, in a different manner.

Mr. Breaugh: OK.

Mr. Smither: In this circumstance, I think you should keep that part of the statute down to something very specific so that you know exactly, because this is the principal area of concern, or should be. You have the political area of concern you are expressing. It becomes very difficult to include the two in the same act and deal with them in the same manner. I think it is a matter where maybe you want to have the committee look beyond this statute. I suggest maybe you have this statute clarified as being "pecuniary" and then you address the secondary question separately or as an addition or amend separate parts of this act.

Mr. Breaugh: I have no difficulty in saying that we all have our own biases and we should have. If we belong to different political parties, we should have different political philosophies at work here. We will come to politics with different ideologies and different work backgrounds and different value systems. I have no interest in chasing that at all. I have no interest in chasing that they made a stupid political decision. What I am chasing under this statute is probably a little more specific than that and I am looking to try to make it clear.

I appreciate your suggestion that perhaps the way to do it is to say that pecuniary interest is one clearly identifiable field of conflict that I want to identify as clearly as I can and mark that. Then I move to whatever two or three other fields where I feel there might be something that would be a conflict. We try to identify perhaps only two or three things where we define what a conflict is and what the nature of that conflict is, and that clearly, in those two or three circumstances, that is covered by the statute and the rest of it is political decision-making.

Mr. Smither: You are dealing with the pecuniary interest of somebody other than the member, I think, in your second part.

Mr. Breaugh: Yes.

Mr. Smither: If you confine this bill to the interest of the member and his immediate family, you confine the other bill or other part to interests of other parties, which may come close to the influence aspect of it. To try to bring them all in together, you lose your priority. You lose essentially what you are aiming for here, which is to get something clearcut that the public can identify with and have reassurance from.

Mr. Breaugh: I am reminded too of what Mr. Justice Parker had to say in his final comments, that the thing has to be in clear language that people understand. In my view anyway, the clarity of the act is essential. I do not think you want an act that is going to have to wait for four or five years of decisions by a commissioner or challenges in a court. The purpose of the exercise is to be as clear and succinct as you can in the writing of the act itself, so that you do not require a whole lot of judgement calls by somebody else. It does strike me that if you take the attitude that we are waiting for the commissioner to set the precedents and fill in the blanks, we have ourselves on the wrong road: Never mind the act; just set up a job as commissioner and say the commissioner decides.

Mr. Smither: It is most unfair to the commissioner in my opinion.

Mr. Breaugh: I point out to the other members of the committee while we are going through this exercise now, that we are already into other areas

of conflict. We already have submissions before us where people are basically making the argument. Cases have already been raised and the act is not yet into law. We are into that field already where this kind of definition is failing to meet the need.

Mr. Faubert: First, I would like to comment that I am happy to see Mr. Smither here, knowing his background interest in conflict of interest in the legislation at the municipal level and also his work in the Association of Municipalities of Ontario.

He raised an interesting point that I would like him to clarify because his statement is for purpose of clarification. Probably one of the most controversial aspects of the act is the relation of spouse and the minor child to the member in the interests of how you connect the interests.

I take it, Mr. Smither, directly that you are saying that if the legislation is to be what it purports to be, and that is directional or advisory, as legislation then it should clearly be there so there is no misunderstanding and no misinterpretation. When you are talking about the disclosure of the spouse's or minor child's interests or financial affairs, that would be because they are tied directly, or should be, in the legislation to that of the interests of the member. Is that basically what you are saying for purposes of clarity only in the instructional aspect?

Mr. Smither: Anybody should be able to read that act and on the face of the act know what is required. It should not be necessary for us, but you are inevitably going to be, as the municipal conflict act has shown, repeatedly before the courts. If there are criticisms of that statute, it lacks clarity in certain areas. In hindsight--I helped write the act--we could have put certain additional words in it. We could have made it clearer.

I see in this act a problem, too. Again, your draftsman has answered your request to give you a full spectrum statute, but I think it is too broad and it lacks clarity and certainty. You cannot read it and know what it is that is required of you. Any member, any public person should be able to read that act and know what is required of a member. They should know clearly what the process is. They should know that there should be no question of having to rely on implication. It should be there right on the face of the act.

Mr. Cordiano: Regarding this whole question of private interest, I was following along what you were saying in that this is a negative way of approaching private interests and saying that these are the things that are not private interests and everything else could be. That is left to a great deal of interpretation.

The thing that we are struggling with here is how to clarify that in a very precise fashion. I do not think that can be done, quite frankly, in the drafting of the words to say what it is and what it is not, because you can go on endlessly about any number of circumstances.

How would you be able to divide that into specific sections?

Mr. Smither: I would say the private interests are things of pecuniary interest, period. Then I would set out in a separate section the exceptions to that rule.

Right now, you have private interests meaning not what it means but what it does not mean. Your exceptions are included in the definitions. I would

take the words "private interest"--and for the life of me I do not know why you need to have "private interest"--and I would call it pecuniary interest and say what I meant. Then I would set out another section and say, "These are exceptions to the rule."

Again, as you have done with the Municipal Conflict of Interest Act in section 4, you set out a list of exceptions. There is one I would strongly recommend you include in your own act. It is probably the most important exception that has ever been placed in a conflict-of-interest statute. It is the last one. Surely it is reasonable.

Section 5, the one requiring disclosure, says it "does not apply to a pecuniary interest in any matter the member may have by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member."

That section in the Municipal Conflict of Interest Act, if properly applied, should have eliminated 50 per cent of the disclosures being made in municipal councils.

There are people who will not use it. There are people who will shy away from it. What it is really saying is if it is trivial, remote and insignificant, it is not a concern of the legislator, nor should it be. It seems to me that is a section you might consider putting in your own act and get rid of the trivia which hangs over the subject, no matter wherever it is discussed.

Mr. Cordiano: I agree that when you look at it with a very detailed kind of perspective, that is the difficulty I would have, as a member, in trying to determine what is pecuniary interest in a thing. That is clear to me, but would what is not a nonpecuniary interest be considered a private interest under this bill?

Mr. Smither: I have lunch with my member now. My member will not let me pick up the tab. It is very foolish. It is going to cost you people a lot of lunches.

Mr. Breaugh: Wait a minute here.

Mr. Smither: That is what the act is saying. You had better take another look at it. I am serious.

Mr. Chairman: It is saying up to \$200.

Mr. Smither: Up to what?

Mr. Chairman: Up to \$200.

Mr. Smither: That is a gift.

Mr. Chairman: A lunch is a gift, is it not?

Interjection: It does not mean the same thing.

Interjection: Is it a lunch or is it a bribe?

Mr. Cordiano: That is not the point.

Mr. Chairman: That was the supplementary, Mr. Cordiano.

Mr. Sterling: I have just one question for you. With regard to the development of the different standards for private interest or a conflict of interest which have emanated in the municipal political field for different kinds of meetings or different kinds of decision-making participation that you have outlined, have they been developed clearly just in legislation in the Municipal Conflict of Interest Act, or have they been developed in terms of the decisions that have emanated out of case law in this area?

You mentioned about there being a different standard for a municipal council in terms of conflict when they are in a situation where they are dealing in a quasi-judicial fashion, where they are making a decision of that nature. How has that been developed? Is it in a statute alone or is it in the case law as well?

Mr. Smither: No. First, the statute itself evolved from the cases that occurred before 1972. The statute was then enacted in 1972 rather hastily and had a lot of defects in it. After a number of minor revisions, it was completely re-enacted again in 1983.

There is no distinction made where they are acting in a quasi-judicial capacity. They still are bound by the Municipal Conflict of Interest Act.

Mr. Chairman: Pardon me, Mr. Smither. Would you move up just a little closer and speak into the mike so that Hansard can pick you up, so that for posterity, 100 years from now, we know exactly what you said?

Mr. Smither: I am sorry. When the member is acting at a hearing in a quasi-judicial capacity--and there are very few circumstances, but there are some--that member is still bound by the Municipal Conflict of Interest Act. That is not the issue. The question is are they bound at any time by the laws against bias. The laws against bias, the courts have said, only apply when they act in a quasi-judicial capacity.

There was a case either in Brampton or Brantford recently. It was a question of a hearing, a closing of a road. It was argued that the members were biased. These are the kinds of rules--I am by no means an expert on the laws of bias--where the members have to be there when the information is first imparted. They must not prejudge the issue. The members who heard the evidence must be the ones who make the decision.

In this instance, it was argued they had prejudged the issue because they had done other things in the planning process which made it inevitable that this road would be closed. Therefore, they had not come with an open mind. The court said no, the planning process was a legislative process, not a quasi-judicial one. Subsequently, you amended the Planning Act to say that the planning process is a legislative one, eliminating that problem for the future. But it still hangs over there. There are some circumstances when they must avoid bias, but there are not too many now. It is very difficult, particularly where there are somewhat less than exact procedures at the municipal level, to be sure that is being followed.

Mr. Sterling: Perhaps after you retire, you could get from the clerk a copy of Mr. Aird's opinion with regard to the conflict of the Attorney General on page 5 when he is dealing with private interests.

I made the allegation that there were possibly two private interests

that were in question. Mr. Aird says, "I do not believe that it is either necessary or prudent to attempt to give an exhaustive definition of what constitutes a 'private interest' when a member makes a decision." I think he is in a conundrum as to what a private interest is.

Mr. Smither: I have a concern that the member himself will not know what a private interest is. How can you avoid a conflict if you do not know what it is you are trying to avoid? You are going to get the situation you have at the municipal level, where some people will not read the act, will not look at the exceptions and will not have regard to them anyhow. You will always have that problem.

We have people who are genuinely concerned but they do not know with certainty and, therefore, they do not participate or they hesitate. I do not think you need to have that. I think you have to have something clear-cut. Everybody needs to know with some precision what it is we are concerned about.

Mr. Sterling: Do you agree with the penalty section, so to speak, of the act, section 16, which basically throws it back in the hands of the Legislative Assembly? In other words, the commissioner cannot do anything. All he can do is make a recommendation to the Legislative Assembly.

Presuming we have a majority government, then in effect the Legislative Assembly can be controlled by the Premier or the executive council of the day. Therefore, in my view, there are really two sets of laws here. There are those for the group that have the numbers and there are those for the group that do not have the numbers.

I just wondered if you had any comments with regard to section 16.

Mr. Smither: I have not really thought too much about that. You have got the political situation. The situation would be in the public domain. I think that is probably the strongest recourse of all. But I appreciate the point you are making.

Mr. Philip: I have a question on the Municipal Conflict of Interest Act section you were referring to, which is clause 4(k). As a layman, it seems to me, just without reading the judgements, that some of the judgements have been fairly severe in their interpretation of what the pecuniary interest was. Even with clause (k), the interpretation may be different than what I would consider the abuse, if you want, of one's office.

Do you have a view on that? Do you feel that anything should be changed in clause (k)? If you were introducing clause (k) into this bill, would you make any changes in it that would prevent accidents where common sense would tell you that the person really was not gaining a benefit of any significance, but suddenly finds himself out of office as a result?

I am thinking of somebody, for example, voting some money that applies to a large group of public servants, or something like this, and suddenly forgetting at the moment that his wife or one of his children happens to be one of those 10,000 people he voted for. It seems to me it is very extreme that someone would suddenly find himself in a conflict in a situation like that.

Mr. Smither: Your point is extremely well made. There are a number of problems with the Municipal Conflict of Interest Act, but the biggest problem unfortunately has been the way it has been construed in the courts. We

have had a situation where lawyers, who, inevitably, in arguing their case, are going to do the best job for their client, go back through the old cases before 1972, which were based on an entirely different philosophy, and support their arguments with those cases.

Before the lower courts, we have had some inconsistent decisions, but consistently before the Divisional Court on appeal, we have had a very stringent and tight interpretation of the statute, invariably going back to cases before 1972. I suggest the problem has not been with the statute itself and the intent of the Legislature; it is the fact that the legislative intent has not been recognized by the courts. They have not looked at it from the standpoint of the alternative method that was a complete change to disclosure brought in in 1972.

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As to clause (k), "remote or insignificant," that inevitably is argued by everybody as a final alternative argument. They are going to try to defend themselves to the last ditch. I have not seen one place in which I thought it applied and the courts have not seen one place in which they thought it applied either. I may be missing one recently, but I do not think so. In all the cases that have come up, I have not seen any where I would have said the matter was remote or insignificant. There were cases before that was in the statute but not since it has been in the statute.

Addressing the point particularly of the member who makes a mistake, that is another very good point, and there is a section in the Municipal Conflict of Interest Act which deals with saving provisions. Again, I would suggest, on your suggestion as much as mine, that be considered for inclusion in your law.

You have the difference that you are not going before a court, your commissioner is going to rule and your legislative body is going to decide ultimately. Even so, if you are going to cover that kind of situation, then you look at subsection 10(2) of the Municipal Conflict of Interest Act.

This is the situation where the member has been found to have contravened the act. Then the judge is entitled to look at the saving provisions and, in effect, if the judge finds the contravention was committed through inadvertence or by reason of a bona fide error of judgement, the member is not subject to having his seat declared vacant and so on.

You have inadvertence and bona fide error of judgement considered as a saving provision after the fact of filing a contravention. Inadvertence has been interpreted to include ignorance of the law, a mistake, something of that order. Bona fide error of judgement is simply where I look at the facts, I make a judgement call and I am wrong, but I did it in good faith. That is the sort of situation.

Mr. Philip: That leads into an example that I would like to give. I was going to ask the Attorney General but I will ask you first. Not being a lawyer, maybe you can explain this process to me. Is it possible that under this act I could be concerned about a possible conflict, write to the commissioner and the commissioner says, "No, you are OK, Ed, there is no conflict in my judgement." Then another MPP says, "I disagree with that" and takes the matter to court.

Can I be found guilty by way of the court even though I have made a

mistake, namely, a mistake of the commissioner, the commissioner saying there is no conflict but the judge saying there was? Is that a possibility under the present act? If we were to include subsection 10(2) of the Municipal Conflict of Interest Act, as you just suggested, would that at least prevent that from happening?

Mr. Smither: First of all, I should say I am a journalist and I am not a lawyer either. You can take the advice on that basis. But, placing it in the municipal conflict-of-interest situation, there have been circumstances in which legal advice was sought and obtained in writing and it was wrong, and the courts have subsequently held that the member had contravened the statute. But in each instance they have taken into account that the member was acting in good faith based on advice received. I think the member of the House receiving the commissioner's advice would have a persuasive argument.

The court in the Edwards case in Cobourg, however, made the point that "we will not always take that position." Quite advisedly so, because I might deliberately seek out a legal opinion which was not the correct one, assuming that such opinion is available and then use it as a subsequent defence and find the courts barring themselves and saying, "If that occurred, we would not recognize it."

Mr. Philip: Would you agree, though, that there is a significant difference between my seeking the commissioner, who is supposed to be independent advice, and seeking a legal opinion?

I can shop around for a legal opinion that allows me to do a great number of things and I might get conflicting legal opinions. If I do not like one legal opinion, I might seek another until I get one that I do like that allows me to do what I want and then use it as a defence. But you cannot do that with the commissioner. I mean, there is only one commissioner and he is in that spot.

Is it still possible under this act that I could be found in conflict by a judge, notwithstanding the fact that the commissioner has told me I have no conflict?

Mr. Chairman: I think we should try to clarify it. As I understand it, Mr. Philip, there is no avenue whereby you can go to the court and get a ruling on this.

Mr. Philip: Sure. An MPP who does not like the commissioner's ruling says, "You still have a conflict and I can take you to court."

Mr. Chairman: I will ask the parliamentary assistant.

Mr. Offer: The legislation is designed so that there would be no appeal from the commissioner's ruling. The reason for that is so that there would be a greater reliance on members to seek out rulings by the commissioner so that they would have a greater degree of reliability in carrying on their particular office.

Mr. Philip: That is reassuring. I guess I got--

Mr. Smither: May I ask a question on that? The Statutory Powers Procedure Act--I think that is the statute--speaks of a tribunal and a person making a statutory power of decision. Is the commissioner to be a tribunal under that act? If he is, then his ruling is subject to judicial review.

Mr. Breaugh: Just to stick my nose in this, I do not think it is quite that clear-cut. As they found out in Nova Scotia with our friend Billy Joe MacLean, an assembly can say whatever it wants, but you cannot preclude people from going to court. Now, they may go to court on the basis that: "Forget about the conflict of interest. Here is a criminal charge against this guy."

So there are ways of doing it. Now, the intention may be, and I think it is fairly clear that the intention under this act is, that you do not want this particular piece of legislation to be subjected to scrutiny by some other court process. But I would put dollars to doughnuts that the fine legal minds in Ontario are out honing their skills already to figure out how they will get this in front of a court. I would bet my personal small fortune of \$2.55 this morning that they will find a way of getting it in front of a judge, and I do not think you will stop that.

Mr. Chairman: You are getting more liberal with your money all the time.

Mr. Breaugh: Yes. The pay raise has not come through yet, so I have the 55 cents left.

Mr. Smither: If the Statutory Powers Procedure Act applies to these circumstances--and I would suggest that you examine whether it does or not--and the commissioner is a tribunal, then it would be subject to judicial review.

Mr. Philip: Can we get a comment from Mr. Offer on that?

Mr. Offer: Basically, first, the Statutory Powers Procedure Act does not apply to matters before the Legislative Assembly.

Second, certainly there would be the opportunity for people to possibly question the jurisdiction of the commissioner. That would not go towards the decision, but it could be directed towards whether the commissioner has that jurisdiction. There is also the concern, which I think was broached in some detail yesterday, that if a member availed himself of the opinion of the commissioner and another member happened to bring up the same matter, the commissioner could take a look to see whether the facts given to him from the member were in fact the same as alleged by another member, so there is that possibility, but that, we suggest, is somewhat clear in the legislation.

Certainly any member would not be acting in his own best interests in trying to obtain an opinion from a commissioner while at the same time holding back some facts from the commissioner. It could be a tainted decision, and we would think that a member just would not obviously operate in that form. Of course, that is up to the member, but then again--Mr. Breaugh is smiling.

Mr. Philip: I am not sure that my anxieties have been relieved--

Mr. Breaugh: We cannot do that here, Ed.

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Mr. Philip: --concerning that section of the bill. Do you think it would be a safeguard to put in subsection 10(2) as an extra defence that would at least allow a member to say in a court of law, if some other member did force it and managed to get it through to having a review, that at least

subsection 10(2) would be a defence, that the member had gone to the commissioner and had followed the commissioner's advice?

Mr. Smither: Frankly, I want to think about that. I could see including inadvertence and bona fide error of judgement. If I am arguing for clarity, then I am saying bona fide includes the opinion of the commissioner. Maybe you are correct and we should be saying something to that effect in the bill. I would want to think it through, quite frankly, but I understand the point you make.

Mr. Philip: Can you think it through and get back to us within a day or two?

Mr. Smither: If you wanted a quick answer, I would say that I am having a little difficulty with including it in the bill. I think the commissioner obviously is going to be fully conversant with the legislation and the intentions. He will have all of the evidence. He will have not only the opportunity to have what the member presents to him but also, as has been pointed out, any other facts that come to light. That opinion, we hope, would end up being the opinion in all circumstances, and there would be no need for anything else. It begs the question to put it in the act.

Mr. Philip: I just have one question on a different matter, and that is, you did not address yourself to the word "opportunity" in section 2 of the bill. "Opportunity," to me, seems to be a fairly vague sort of word that could be open to all kinds of interpretations. What is an opportunity for me may not be an opportunity for someone else. Do you have any trouble with that word?

Mr. Smither: Yes, I do. I think it is just part of the uncertainty that is here. Again, one of the weaknesses of the Municipal Conflict of Interest Act--but also one of its strengths, depending on which side you are on--is that it applies at a particular point in time, at the point of decision-making. It is saying, in effect, "when a member has a pecuniary interest in a matter under consideration." It is not a question of "will have."

The previous legislation referred to the subsequent acquisition of an interest and it was very elastic in its draftmanship in the 1972 statute. That was eliminated in the 1983 statute because, again, of the uncertainty it created. You are trying to establish it at a point in time.

Here again, in what you asked your draftsmen to do, you have got good draftmanship because you have the broad spectrum addressed. You have the opportunity, but again it creates an uncertainty, and just how much uncertainty can you live with? That is the question you are really addressing here. You are trying to do a good job, you are trying to get a broad spectrum of coverage, but how much uncertainty can you live with?

Mr. Chairman: We have one more questioner, Mr. McClelland, and then that will be it for this morning, Mr. Smither. Then we will have Judy Hunter as the next presenter.

Mr. McClelland: This is as much a supplementary as a question in itself. I appreciate your comments, particularly with respect to defining conflict more succinctly or in a tighter compartment, if you will. You touched on some of the advantages of importing the definition from the municipal act. You also touched on some of the disadvantages: the case law that may have been applied with perhaps, I think to use your words, legislation that was based on a different philosophy.

In all that discussion I am sure you considered it, but we did not hear anything about the element that is in this particular act, upfront disclosure. It seems to me that, having had that disclosure, it somehow begins to move us towards that process. I do not think we have arrived; indeed, that is what we are struggling with. I appreciate the comments of Mr. Breaugh that we have the advantage of tying it down, and that is also the disadvantage, perhaps having things that fall out of the tight definition.

I do not know whether you can give an answer. I would like to hear perhaps whether you have some comment on the extent to which the disclosure aspect addresses that. As I said--if you will forgive me for repeating it--it seems to me that disclosure begins to address that difficulty. It takes "private interest." I know it is dangerous in this kind of exercise, but we would make some presumptions about what "private interest" may include given the disclosure aspect, that cornerstone of disclosure in this act, removing certain elements from it, the exceptions in clauses 1(a), 1(b) and 1(c). I would just like to hear if you have given thought to that and does that temper your comments or--

Mr. Smither: No, it is not. In fact, I see the disclosure element as being the potential trap. One thing you should clearly recognize is that matters you have disclosed do not limit the definition of "private interest". "Private interest" is not confined to matters you have disclosed in your statement to the commission. That must be abundantly clear. That is the correct response I received from my inquiry from the Ministry of the Attorney General. I did not particularly ask that question because I felt it was self-evident, but it should be clear to the members that the matters they have disclosed do not limit the application of "private interest." It is as wide open as we have suggested it is.

Mr. McClelland: Exactly, but that begins to bring focus to it. It seems to me that it does and that is the balance we are looking for. It seems to me it moves us in that direction to some degree; maybe not enough. I appreciate your comments on this, but I think that is the flipside, the balance of it that we sometimes tend to forget, that there is something fundamentally different in this act and that is the disclosure aspect of it. I think that lends itself to some solutions but also obviously other problems. I was curious to hear your reflections on that.

Mr. Chairman: Thank you, Mr. Smither. We appreciate your coming down and giving us the benefit of your experience with the Municipal Conflict of Interest Act after studying our provincial proposal.

The next delegation is Mrs. Judy Hunter, chairman of the Bridlewood Residents Hydro Line Committee. Mrs. Hunter, perhaps you will take a seat. You will have to try to speak into the microphone so that we have the benefit of Hansard later on.

Mrs. Hunter: I will do that.

Mr. Chairman: Do you have an opening statement, Mrs. Hunter?

Mrs. Hunter: What I was going to do was simply read my presentation and then I would be very happy to answer questions from the committee members.

Mr. Chairman: I understand you had a little extra problem this morning. Did you have the benefit of flying over Toronto a little bit longer than usual?

Mrs. Hunter: For about an hour, yes.

Mr. Chairman: An hour.

Mrs. Hunter: I do not know if it was a benefit.

Mr. Chairman: You came in from Kanata this morning. OK, Mrs. Hunter, do you want to proceed?

BRIDLEWOOD RESIDENTS HYDRO LINE COMMITTEE

Mrs. Hunter: First of all, I would like to say that I am very pleased to have been asked to come to the committee today and make a presentation on conflict of interest. I am here as a layperson. I am not a lawyer. I am not a politician. I am simply a resident of this province with some very real and genuine concerns about the bill that is before you.

My basic concern is that if "conflict of interest" is defined too narrowly, the important areas of conflict will remain to concern the public and to plague this government. I will now proceed to describe why the bill should include all types of conflict, not just financial. When I am doing that, I am going to go into a little bit of background about why I have these concerns about the bill before you.

My beliefs about conflict of interest stem from a battle I have led for 16 months against Ontario Hydro's plans to build a power line through my community of Bridlewood, Kanata. In our situation, we are fighting a 1985 joint board decision permitting Ontario Hydro to route two rows of 16-storey tall, 500,000-volt towers through the centre of Bridlewood. The city of Kanata and the Bridlewood community appealed this board decision twice, once in 1985 and again on a subsequent hearing in 1987. The Ontario cabinet ruled against Kanata and for the joint board on both appeals.

The Divisional Court of Ontario will soon be asked to rule on the residents' claims of denial of natural justice. If the court agrees, new hearings would be in order. Our hope still is, however, that the cabinet will not wait for a court decision and will instead decide itself to give Bridlewood new and fair hearings.

The community believes that conflict of interest played a very significant role in the two negative decisions from cabinet on the appeals. As documented in the attached newspaper article, appendix A, the present Attorney General (Mr. Scott) acted in 1985 as counsel for the same joint board. Already elected as an MPP, he appeared in court on behalf of the joint board to establish that his client's procedures in the hydro line hearings in eastern Ontario were correct. Twelve days later, Mr. Scott joined the Ontario cabinet.

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Kanata's first appeal included complaints about the procedural irregularities of the joint board hearings in 1985. Our understanding is that Mr. Scott chose to excuse himself from participating on the legislative committee of cabinet reviewing the Bridlewood appeal due to a possible conflict of interest. While we applaud this move, we note that Mr. Scott did, to our best understanding, participate in the decision when the question finally came to full cabinet.

Our second appeal to cabinet in 1987 dealt again with the procedural

irregularities of the joint board. This time, Mr. Scott chaired the legislative committee of cabinet looking at our appeal. Cabinet ruled on the appeal almost one year after the hearing.

Our community feels very strongly that Mr. Scott's position as chairman of the cabinet committee placed him already in a position of great influence over fellow committee members. In addition, we believe he is in conflict by ruling on a question of procedural irregularity by a board that he had recently represented in court, and on a question of procedures.

The situation is legally termed "apprehended bias," or the appearance of bias. Residents and others observers believe that Mr. Scott could not help but be biased towards his legal firm's client. The link between his work for the board and our appeals was very directly related.

In 1986 and 1987, Mr. Scott told colleagues that the Bridlewood problem should be decided in court, that residents should not expect the cabinet to rule in their favour. Scott's view was echoed by a cabinet member, Bernard Grandmaitre, in July 1987 on a CBC radio interview when he said the question of the hydro line routing should be decided by a court, even though the cabinet had the power to order new hearings.

This committee, I believe, must regard apprehended bias as a form of conflict of interest. Our community feels that we have been denied justice by the appearance of bias. Our case before cabinet could not have received the same impartial consideration that it would have without Mr. Scott's active participation on the appeal.

Conflict of interest should not be restricted purely to matters concerning financial gain or loss by an MPP. When a cabinet rules on an appeal, its members should not have had past close involvement with the subject matter. On such serious matters, the cabinet must be seen as impartial judges, without anything hampering the appearance of objectivity.

The public expects the cabinet to act in the public's best interests. The government should always act in a way to protect its citizens, especially in this case where the government is not only ruling on an appeal, but is also building the hydro lines.

People in this province suffer a loss when their government is seen to be the prosecutor, the judge, the jury and the executioner. We in Bridlewood are filled with deep-seated anger because to date we have received no justice.

Justice must be rooted in confidence. In Bridlewood and throughout Kanata, confidence in this government's system of appeal has been destroyed. Their confidence in the cabinet has been destroyed. Therefore, justice has been denied.

At this point, I borrow briefly from a text in administrative law: "In considering whether there was a real likelihood of apprehended bias, a court does not look at the MIND of the justice or whoever sits in a judicial capacity. It does not look to see if there was a real likelihood that the justice would, or did, in fact favour one side at the expense of the other. The court looks at the IMPRESSION which would be given to other people. Even if the justice was as impartial as could be, if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit" on the decision.

Clearly, to the reasonable observer, Mr. Scott would be considered

biased. He would be seen to have favoured the side of his former client, the joint board. It is apparent that he should have excused himself entirely from any cabinet participation on the appeals.

My heart cries for the people in my community who have lost faith in the cabinet appeal process. As a result of cabinet's decisions, the situation in Bridlewood is causing anxiety and sleepless nights for many parents. The blame is directed at this government.

The bill before you should be expanded to include the question of apprehended bias. Only in this way will there be justice for the people of Ontario, and the problems like Bridlewood's can be avoided in the future.

Since cabinet must at times take on the role of acting in final judgement, it must take the same precautions as a court. Justice must not only be done, it must be seen to be done.

Mr. Chairman: Thank you, Mrs. Hunter. Questions?

Mr. Breaugh: This is interesting, because this shows you how convoluted things get around here.

Mr. Chairman: I think everyone has the benefit of Mr. Sterling's letter and also the commissioner's response to that.

Mr. Breaugh: Yes, we have, before we pass a bill, an opinion rendered by the commissioner, who is not yet established but who has been in operation for the better part of a year, and a citizen before the committee claiming that the bill does not work and the process does not work. I think what we are at here is the heart of what conflict-of-interest legislation is about. It is not here to serve the members; the bill is here to serve the people of Ontario and their perception of whether the bill addresses something real or imaginary.

I am afraid that somewhere in the process--and we can take this as a good example, and I am very interested in your response--as it goes through the process here, the one that is being proposed in legislation and, oddly enough, is actually in practice now, a member of the assembly has raised the matter that you have raised. He has been told by the Premier (Mr. Peterson) to send it to the commissioner. He did that. The commissioner has responded.

I find it fascinating that the commissioner says in his response that the words "private interest" are not defined in the bill. This is after we just went through for about an hour the definition of "private interest" that is in the bill. Yet the commissioner rules that "private interest" is not defined within the bill, even though it is already printed, been operational and we have just argued it for a while.

I am interested in your perception of what is wrong here. I take it from your submission that in your case you are not really arguing that the Attorney General of Ontario made money off this deal.

Mrs. Hunter: No.

Mr. Breaugh: You are arguing that the process is wrong, that you have been dealt with unfairly and that in some way the decision-making process of the cabinet allowed him to argue before a board on one case and then sit in judgement on whether the board did the right thing in the second instance. So

it is that perception that there is a conflict of interest that does not involve money here, but involves fairness, and the perception is, from your group, that it should not be this way.

I am fascinated by the argument because it appears to me that the government is saying, in effect: "You are right. We will not rule on this; we will send it off to a court." Let me hear your argument now. Let me phrase it this way: Precisely what do you think the Attorney General of Ontario should have done from day one?

Mrs. Hunter: I think the Attorney General should have excused himself from any participation in any of the cabinet dealings with our appeals because I think, if the citizens are to respect the government's decision, the cabinet's decision, the cabinet has to make very sure that it is without bias, that it has not had a past involvement, that once the decision is rendered, the citizens can respect that decision and not be concerned that it has been biased to one party. Do you follow me?

Mr. Breaugh: I do. I want to get at this because I think, if this bill is to be of any use to anyone in Ontario, you are asking the critical questions here. I am sure the Attorney General, were he here this morning, would say, "I did it all by the book and the commissioner backs me up." The citizen is now before us saying, "By the book or not, commissioner's ruling or not, the perception in my community is that he did not act properly."

That poses another practical problem that we touched on a bit yesterday. How does the Attorney General, who is elected to do this kind of stuff, mesh coming out of private practice where he, if he is a lawyer and he probably is, may well have been before the courts and before various boards and tribunals on a number of occasions representing all kinds of cases?

Is the only way we can resolve this to say that where he has had any connection, any association with a case that was before a court or before a tribunal or a board, he must automatically say, "I have a connection with that. I represented that group before that board and I must excuse myself from it"? Would that resolve the problem?

Mrs. Hunter: Certainly in this instance it would have resolved the situation in my community, because not only did Mr. Scott sit in on the decision, but we feel that if he was chairman of the committee, certainly his position as Attorney General may well have influenced other committee members. I think that is another part of the problem with the decision that was rendered on the Bridlewood situation, not only with Mr. Scott in a position of conflict, as far as we are concerned, but we also see that perhaps he has influenced other cabinet members because we are party to what he was saying in public.

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Mr. Breaugh: I think she brought before us one of many critical questions. From our mindset here as legislators, we have written the book, set up a commissioner, sought the commissioner's advice, and I am sure the Attorney General would say, "I have done everything anybody could reasonably expect me to do to clear the conflict out of this," yet the conflict persists. I think that is something the committee has to be mindful of, even if--let me take it a bit further and see how far you would agree with this--even if he said, "I am not going to sit in the room where this committee of the cabinet does it," is his conflict resolved by the fact that he says, "I am walking out

the door. I will not sit in there while the cabinet committee deliberates on this matter"? Does his conflict extend to the point where he is a member of the cabinet and he has had extensive relationships over this particular issue? How does one resolve that conflict, because we are getting into the impractical here? That is the problem.

Mrs. Hunter: The impractical?

Mr. Breaugh: Yes, to put our side of the story to you and get your response, if the public says that if you have ever had a connection, if you have been a lawyer and you have ever represented something before a court or a board, you almost have to leave the cabinet every time that matter is deliberated, or the cabinet cannot make that decision.

Mr. Chairman: You mean a cabinet meeting, not the cabinet.

Mr. Breaugh: No, the cabinet, because that is the critical question here. I am not sure whether you would be satisfied, and I am reading between the lines a little, but I am reading here that you say the Attorney General cannot resolve his conflict by just walking out the door or saying the Divisional Court will do it. You believe that because he is a member of that cabinet and the cabinet will at some point deliberate on the matter, he will have influence over it. You said in your opening statement that because he chaired the cabinet committee, he will have undue influence, so to speak, on whatever decision is reached there and that there will be a bias that is unfair to you and a prejudice really against your argument in the case.

Mrs. Hunter: In the ideal situation, I think he should have excused himself from all cabinet discussions, not just the committee discussions but when it went to cabinet. I think he should have excused himself because I think he is acting as legal counsel for one party and then he is putting himself in the position of judge on the same matters that he had acted on as counsel. I do not know how he can do that. It is the same situation as if a lawyer had acted for General Motors and then, when he became a judge, the first case that came before him was a lawsuit against General Motors. I do not think the party bringing the lawsuit would think it was getting fair treatment. I do not think the judge should sit on that decision.

Mr. Breaugh: The problem is maybe one of perception but it is a real one.

Mrs. Hunter: It is the appearance of bias on the part of the joint board.

Mr. Breaugh: I am not sure that anything the Attorney General in this case could have done would have been effective, short of saying: "On this particular matter, I cannot sit in the cabinet. I have to excuse myself." How he does that is fascinating. I am sure the Attorney General would say, "I will not chair that session," but then the public's perception is, whether he was physically at the meeting or outside the door, he knows these people, he talks to them, he will influence their decision, and because it is a private cabinet session, the public will not really know what happened.

This committee, in another life, for example, has argued that people who are advising the government on who gets government grants cannot get the grants. It is not good enough to say, "While they were awarding me a \$200,000 grant to study some pesticide, I left the room." We argued among ourselves that you know these people, you are part of their normal decision-making

process, and the fact that you leave the meeting for 10 minutes while they give you \$100,000, does not resolve the problem. The perception continues that you exercise influence over them. You may have presented us with something that is not solvable.

Mr. Sterling: I do not think you are in the same frame of thought. I think Mr. Breaugh was coming to the final, ultimate conclusion that Mr. Scott would have had to exclude himself from cabinet in order for you to be satisfied. I do not believe that is your position as we have discussed it before. You are only talking about his excusing himself from this particular issue at the time it was decided. Is that not correct?

Mrs. Hunter: Are you referring to cabinet committee?

Mr. Sterling: I am just referring to Mr. Scott being a member of the Ontario cabinet. You are not saying that he has to quit cabinet.

Mrs. Hunter: No. I would think he would not have a part in the decision.

Mr. Sterling: With the way our system is, we just have to accept at face value whatever the cabinet minutes say or whatever a registry, if there was one to be kept under this bill, would say, that he did exclude himself from those particular discussions. There are some things we have to accept on faith.

One of the things that bothered me through this whole process, as we were going down the road and I was working with you on it, was the attitude of different ministers at different times about their involvement in the issue. For instance, when Mr. Kerrio was the Minister of Energy, I believe he talked to you about the issue, did he not?

Mrs. Hunter: Yes.

Mr. Sterling: But when Mr. Wong became Minister of Energy, he refused to talk to you about the issue. He agreed and then he refused and then he agreed. I understand that he was advised also by the Attorney General on the matter. Did you see a conflict of interest in terms of your talking to Mr. Wong about the issue?

Mrs. Hunter: No. I think the public has to be able to make its case or certainly talk to cabinet ministers about an issue. What we are dealing with in the Bridlewood situation was far removed from that situation.

Mr. Sterling: When you talk about bias in this matter, we had the previous witness. I do not know if you heard him. He was talking to us about bias, and we all have biases as politicians. I think before you came Mr. Breaugh was talking about different value systems that we have, etc. You do not expect that we go into meetings as politicians, be they cabinet meetings or whatever, without biases. Do you differentiate between the kind of hearing that this situation entailed and other kinds of political decisions, for instance, normal policy decisions, decisions dealing with general matters rather than specific matters like this? Do you make a differentiation between the two?

Mrs. Hunter: I think in this case the cabinet was sitting as judge and judged on an appeal from a community. In that instance, the committee has to be very certain that it does not have any biases to either party before it

so that people coming before cabinet or presenting an appeal to cabinet can have a fair and just hearing. That is the problem in my community. We all feel we have never had justice. It is heartbreaking to see what has happened to the people's perception of justice from the provincial government. They are just shattered. I see it very differently. I think if the cabinet is going to sit as judge on matters, it has to be very certain that it does not have an appearance of bias to either party.

Mr. Sterling: So you would have basically a different set of rules concerning those kinds of meetings as per the general kind of activity that a member undertakes here?

Mrs. Hunter: I think it would have to be much more tightly regulated as to past involvement.

Mr. Chairman: Mr. Offer has a question. Then Mr. Philip and Mr. Polsinelli.

Mr. Offer: Thank you. First, Mrs. Hunter if I might, the Attorney General happens to be in cabinet today and that is the reason he is unavailable. It is coincidental that your matter was brought on at the very time of the cabinet meeting.

I have listened intently to what you are saying and to the questions. I must say what we are hearing from the questioning to your submission is what I think Mr. Breaugh and Mr. Sterling are getting at. It is really the nub, the heart of the bill, in dealing with the perception of the public to this legislation and how we are grappling with this legislation.

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I understand, and I think that this is not incorrect, that you are not concerned with the process under the legislation--in other words, that a particular member directed an allegation to the commissioner. The commissioner dealt with the matter and rendered a decision. There is no question that you are in disagreement with the decision based on the definition of conflict.

I am trying to understand the absolute essence of your concern. It seems to me to revolve around the definition of conflict. It was not that a member could write to a commissioner. It was not how the commissioner proceeded with that letter. It was not how the commissioner made his determination, but rather the definition by which the commissioner made the decision. Indeed, the whole definition of conflict is where your concern seems to be.

Mrs. Hunter: Are you referring to the particular decision that Mr. Aird has rendered on this?

Mr. Offer: Yes.

Mrs. Hunter: You have an advantage over me in that I have not read that as yet. Our concern is that the bill before you is too narrowly defined and should include apprehended bias. Is that what you are asking me?

Mr. Offer: Yes. Keeping on that, as this is a bill which is designed obviously to help members in exercising their duties, do you not think that there has to be a line drawn with respect to the interests of members in dealing with matters of conflict, and could you share with us what you think that line should be?

Mrs. Hunter: Yes, I could. I think I have gone into it briefly in my presentation. If a member has had past close involvement with a party that is before cabinet asking for a decision on an appeal, then obviously he should not sit or should not take part in that decision because, to the public, he is going to have an automatic bias to one of the parties, the party he acted for. To my mind, there is just no question that this is going to be seen by the public.

Mr. Chairman: In this case, whether the person had an economic interest--in other words, if the person had been, like yourself, involved in that decision and had then been elevated to the cabinet and whether he had been paid for his other efforts, he would still have a conflict. Is that correct?

Mrs. Hunter: No, because you have other interests. They are not necessarily monetary but his reputation as a lawyer, for example, in Mr. Scott's case, may suffer if we do find, by going to court, that there is a problem with the joint board. Then indeed he will have suffered perhaps loss of, not face, but some credibility in legal circles.

Mr. Offer: So you certainly would not be in favour of narrowing the definition of the concept of private interest to make it just of an economic nature?

Mrs. Hunter: No, I am absolutely opposed to that. I think there is more at stake here to the public than just a member's financial gain. I think the public comes to the government looking for honest decisions, looking for justice, and that will not be served if they do not watch their own biases or the appearance of bias. Did I answer that?

Mr. Offer: Thank you. I wanted to get your sense of that, and that is quite helpful.

Mr. Chairman: Mr. Philip, you can have your supplementary first and then Mr. Eves.

Mr. Philip: What I am understanding you are saying is that Mr. Sterling argued, unsuccessfully as far as Mr. Aird was concerned, that Mr. Scott had two private interests, namely, the protection of his client and the protection of his professional reputation as a lawyer or advocate for that client.

What I hear you saying is that, whether you agree with Mr. Sterling, you have a concern above and beyond that, namely, that as a result of Mr. Scott's activities he developed a particular prejudice and that that prejudice then in turn influenced the cabinet. Is that what I hear you saying?

Mrs. Hunter: I think what I am saying is, to the public there is an appearance of bias on the part of Mr. Scott. Whether or not Mr. Scott did have that bias really does not matter; the fact remains, to the public he appears to have had that bias.

Mr. Philip: Where that leads me as a legislator then is that if I try to somehow put into the bill, I have to think in the concrete as to what will happen if I safeguard against that bias. Let me give you an example. The president of the Ontario Federation of Agriculture has been elected to this Legislature as a Liberal member. It is conceivable, because he is a fairly bright person, that he might well become a cabinet minister at some point in time.

Because he was in a position, as president of the federation of agriculture, of advocating certain very strong policies that would benefit farmers, one could conclude that he might have the same prejudice, if you want, on behalf of farmers that Mr. Scott would have as a result of his experience with his former client.

I guess my question is, would you therefore exclude the former president of the federation of agriculture from ever commenting on any matters of agriculture that would come before cabinet, and if so, would it be for a period of time or would it be indefinitely? If you do that, do you not gut his ability to represent his constituents, a majority of whom are farmers?

Mrs. Hunter: Would the farmers be bringing an appeal to cabinet asking for something? I think you are taking a very hypothetical situation--

Mr. Philip: They might well. On a regular basis, groups of farmers will go before the Ontario Municipal Board, particularly in terms of Ontario Hydro corridors and things like that. That is common.

Mr. Chairman: Or for grants.

Mr. Philip: Grants--all the time.

Mr. Breaugh: Is this not an example of the general and the specific? She is arguing that the Attorney General, in a very specific case, represented a very specific instance--one decision--through the decision-making process. I do not hear her arguing that, in a broader sense than that, people are disqualified because they are farmers or lawyers or auto workers or whatever. I think she is making that distinction.

Mr. Philip: I just wanted to see how far she would go, and that was my question.

Mrs. Hunter: No. I think what you are referring to might be more in terms of drawing on past experience. I agree it is going to be very difficult to include this somehow in the legislation, but I think an attempt ought to be made for the citizens of this province. As you have mentioned, it is a very specific case where the Attorney General acted for the board on the very issue that we have raised an appeal to cabinet on. That is a very specific case, as far I am concerned.

Mr. Eves: I have a supplementary on this point. Judge Parker, in his decision with respect to the Sinclair Stevens inquiry, on page 35 comes up with what he feels are the common law definitions of conflict of interest. He differentiates between a real conflict of interest and an apparent conflict of interest and gives the definition for each. If I understand you correctly, what you are saying, I think, directly coincides with Judge Parker's definition of an apparent conflict of interest.

He defines a real conflict of interest: "A real conflict of interest denotes a situation in which a minister of the crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities."

He goes on to define an apparent conflict of interest: "An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists."

To be right to the point, is what you are advocating two definitions of conflict in this bill, perhaps a definition of a real conflict of interest and a definition of an apparent conflict of interest?

Mrs. Hunter: Yes. I would agree with you 100 per cent. I think that the public has to be protected from the apparent conflict of interest or appearance of bias.

Mr. Eves: Justice must not only be done but must also appear to be done.

Mrs. Hunter: That is right.

1210

Mr. Polsinelli: Thank you for coming before the committee today. I think your presentation really is bringing to light all the difficulties I have had with this bill and all the difficulties I have had with the Davis guidelines, the Peterson guidelines and the whole conflict-of-interest question generally.

I agree with you that the system should be fair and impartial; it should be perceived to be fair and impartial to work properly. But as a legislator, I feel that I need clear-cut rules. I need something I can look to, some piece of legislation, some guideline that will tell me whether or not I can participate in a particular decision.

If as a legislator I have to be concerned with the appearance of a bias or if I have to be concerned about the public perception of an irregularity when in reality there is no bias, when in reality there is no conflict of interest, then I think I am going to have a lot of difficulty doing my job.

If you try to draw a line in a particular piece of legislation that will define how much of a perception of bias is in fact something that should be punishable, I think we are going to have a very difficult, if not impossible, task ahead of us.

I guess the question I ask you is, how do we draw that line? At what point do we say the perception of 10 people is something that should be perceived as a bias or a conflict and therefore should be guarded against and should be prohibited? Or should it be the perception of 1,000 people or the perception of a million people or the perception of a certain community?

Essentially, if we are talking about perception and not reality, if we are really concerned about the appearance and not a real bias, then whose appearance, whose perception? Whom do we have to ask to determine whether or not I can participate in a particular decision?

Mrs. Hunter: Perhaps you have to, in your own conscience, ask yourself. If you have had a past close involvement with a party and you are ruling on an appeal brought to you by an opposing party against that party you have represented, then you have to look at the public in order for justice to be served. You have to look at how it is going to appear to the people. In our case, it is a very devastating decision.

Mr. Polsinelli: I understand that you are not happy with the decision, and I agree with you when you say that if you are looking at perception and you are looking at appearance, you have to look in your own

conscience. You have to ask yourself whether or not you are doing something that is right or you are doing something that is wrong. Unquestionably, if you think you are doing something that is wrong, then you should not do it.

But before us we have a proposed conflict-of-interest bill that says if you are in violation of this bill, you will not only be liable to a fine or a reprimand, you will be liable to lose your seat. I will be liable to lose my seat in the Legislature if I am in conflict, if I contravene this bill.

If we as a committee include in this bill that a perception of a conflict of interest or an appearance of bias is in fact a contravention of this bill when in reality perhaps no such bias or no such conflict of interest existed, I can lose my seat in the Legislature because I may have done something that was perceived to be wrong but in reality was not in fact wrong.

Do you think we should do that as legislators? Do you think we should put that type of prohibition in this bill?

Mrs. Hunter: Perhaps to protect the public there needs to be two definitions of conflict of interest in this bill. I really do not know how to answer that question, quite frankly. I can see the dilemma you are in, but I think from the public's point of view, perhaps cabinet should not be making decisions on appeals. Perhaps you need to change the whole structure.

If you are going to sit as judge and jury on a community's appeal, then you are going to have to be very certain that you do not have the appearance of bias to either party. I come back to that point again and again, because what results from that is the community's feeling that it has been denied justice from the government.

I think that has to be dealt with in this legislation. I feel very strongly that it does. Perhaps two definitions of conflict of interest are necessary.

Mr. Chairman: Excuse me, Mr. Pope. Mr. Offer has a point he wants to make now.

Mr. Offer: On the question of your definition or your concern with respect to apprehended bias. You brought into that term the phrase, "past close involvement." Even in the matter at hand with Mr. Scott, he was not involved in the issue before cabinet. That has been determined. He was on a jurisdictional matter prior to, but had nothing to do with the issue that was before cabinet. Even taking your definition, there would be no difference in the decision rendered by the commissioner and as such one has to concern themselves with how would you define the whole question of apprehended bias using the phrase--and I think I have written this down properly--past close involvement, so that members would be able to act as members of the Legislature?

There are decisions not only at cabinet. There are decisions which members make who are not part of cabinet at committee, in debate in front of the Legislature, in the Legislature. Using your definition, one has to ask is the public not served by a very tight definition of conflict other than something such as apprehended bias, which is I think when you have brought out something in the member's own mind? I question whether the whole concern which not only you, but which all of us have, with respect to public perception, is not hindered without a concrete definition as opposed to having the definition which you have brought forward?

Mrs. Hunter: I am not a lawyer.

Mr. Chairman: A point in your favour. There are so many people this morning who are denying they are lawyers, I wonder if it is an honourable profession any more. Would you proceed.

Mrs. Hunter: I want to respond. I believe Mr. Scott chaired the committee that looked into our appeal. How can you say he was not involved? That is my understanding anyway. The second time around he was chairman of the committee that examined our appeal. I do not know how more involved you can be.

Mr. Sterling: Just a supplementary to Mr. Offer's remarks. There is a continuation here of the idea of comparing what happens in the legislative chamber to what happens in the legislative committee of cabinet which meets in secret, which is dealing with a matter of a quasi-judicial nature. It is a theme that we have had during these committee meetings for the past three days that they try to mix what happens to the ordinary member with these Supreme Court judges who are deciding on the fate of the people in Bridlewood. The distinction between the two is like night and day.

Would you be willing to limit the apparent conflict or the apprehended bias to situations where one, the politicians were meeting in secret; and two, they were dealing in a quasi-judicial manner?

Mrs. Hunter: I think that is the problem. When they are sitting in a quasi-judicial capacity they are acting as a judge and jury and they have to appear without bias to the public. That is really the issue I am dealing with today.

Mr. Polsinelli: Mrs. Hunter I just wanted to conclude my remarks by again thanking you for presenting your point of view to the committee. I think it effectively hit the philosophical nail on the head. You chose to conclude your presentation by indicating that justice must not only be done but be seen to be done. From a personal point of view, my personal maxim is going to be that I will deal with reality and hope that perception will take care of itself.

1220

Mr. Cordiano: I have a supplementary. I just want to go back to this whole point about the perception. The fact is that minister even being present and not having spoken or participated in the discussion, I do not think you could argue that he was involved or that any minister would be involved, when in fact there were no votes taken in cabinet by lack of a cabinet minister's presence at a cabinet meeting. Then one could say, "Well, the minister had no real involvement with the decision." Because I think the cabinet will not take a vote. It will be a consensus position taken by cabinet.

The other problem goes back to what Mr. Breagh was saying--the fact that you are in cabinet means there a perception there that you can influence what other cabinet ministers are thinking. That is always going to be the case.

Mr. Breagh: You are inferring some thought process.

Mrs. Hunter: Yes. The situation I was addressing there was he was head of a committee looking at our appeal. Certainly in that capacity, I think he does have influence. But to the public, there is the appearance of bias.

Mr. Cordiano: That is the problem we have though. You are going to

have that appearance for every cabinet minister who had participated in another life and in another profession where any matter comes before the cabinet. That is a practical matter.

Mrs. Hunter: It is.

Mr. Cordiano: If I could go back to what we were talking about before, how do you get around that? The fact is there are no votes taken in cabinet. The only way you can determine that a cabinet minister is not participating in that discussion is by absenting himself from the proceedings.

Interjection.

Mr. Cordiano: Yes, to the point where that matter was going to be decided. In Mr. Scott's case here, looking at it from the point of view that the decision was made on a number of occasions when he was not present and that the other matters involved when he was present, did not really centre in on the fundamental decision as to whether to go ahead. I have read through this once, but I think Mr. Aird is saying that where he was not present--he was not present the first time--looking on page 4 here. I do not want to get in to the precise pages here, because we can argue about this for three hours. The point I am trying to make is that--

Mr. Chairman: I think--

Mr. Cordiano: Just a minute. I was just trying to make the point that a cabinet minister being present or not being present, and what Mr. Breaugh is saying, is that you are still part of a cabinet. How do we get around that problem? Because everybody has got agenda items. A cabinet minister will have the agenda of the cabinet.

Mr. Sterling: Municipal councillors manage to do it all the time.

Mr. Cordiano: But it is a different situation with cabinet. That is the point I am trying to make. You do have the agenda before you before the actual cabinet meeting takes place. Every cabinet minister will have a copy of that agenda.

Mr. Chairman: We have a question from Mr. Offer.

Mr. Offer: It is a question I would like to get your opinion on. Is it your opinion that if, for example, a solicitor, a lawyer, happens to be part of cabinet and a matter dealing with a previous client comes before cabinet, but that now cabinet minister should absent himself, even though--and this is the crucial point--the matter is something which that cabinet minister, as a lawyer, never dealt with with that person?

Mrs. Hunter: I think it would depend on the situation.

Mr. Offer: He never dealt with the matter.

Mrs. Hunter: Once again, if he is acting in a quasi-judicial capacity--if it is the same situation that existed in my community, and you understand that situation, then I would say, yes, you had better not participate, because it is the appearance of bias. The public may perceive this cabinet minister to be biased towards his former clients, regardless of whether or not he is dealing with the same matter that he represented.

Mr. Offer: So for yourself it does not matter at all whether the

particular matter before cabinet is something which that lawyer acted for in the past?

Mrs. Hunter: When they are acting in a quasi-judicial capacity as a committee is when it is an appeal before them, I think he should excuse himself. I think that is where it hinges on, what capacity they are acting in.

Mr. Chairman: Mrs. Sullivan, you are the last questioner.

Mrs. Sullivan: Thank you. There are one or two issues that I wanted to further explore with you, Mrs. Hunter, and thank you very much for being here today.

One of them relates to where members come from in terms of their own backgrounds and their own participation, because all cabinet ministers are members first and foremost. As members are elected, they have come from various community involvements, corporate activities and professional activities and their expertise is useful in the decision-making process at whatever level.

In drafting a conflict-of-interest bill that will relate to all members of the Legislature, we really have to move from the specific to the general in terms of reaching conclusions relating to matters of definition of conflict. For a second, I would like to refer, and to read into the record if that is necessary, to Mr. Aird's report relating to this issue.

There are two things that Mr. Aird says. First of all, he came to the conclusion that Mr. Scott did not have any private interest that could have been furthered by his participation and that, indeed, Mr. Scott had no participation whatsoever in the substantive hearings before the joint board that gave rise to the decisions that were under petition. Later on, he says Mr. Scott's involvement has been restricted to procedural and jurisdictional matters which arose before any substantive issues were addressed; by the time the substantive issues were addressed, Mr. Scott had ceased all involvement with the joint board.

Taking that factual situation, I still understand that you are discussing the bias. Assuming the factual situation that Mr. Aird has put before us and before the community in his report, where I have a difficulty is in learning where and how broadly defined a bias should be. You are asking us to include a definition of "bias" in this legislation.

I have worked as a journalist in the past and bias in journalism is one matter that is constantly being raised. It is certainly not defined in a legislative way until you get much further down the road in bias, when you get into libel and slander, but if there is a perception of bias in the community, how small or how large should the community be where the perception is? Can one person say, "I perceive a bias here and, therefore, we ought to invoke the provisions of the conflict of interest act," or should it be a larger community? How do you define where the public perception of bias enters? This is something that I am quite interested in hearing your views on. Because you are asking us to include a bias argument, a bias definition in the rules relating to conflict, how broad or how limited should they be?

Mrs. Hunter: Does it really matter how many people would perceive bias?

Mrs. Sullivan: I am asking you that. I would like to know your opinion on that.

The other thing I wonder too, if you could comment on, and it relates to the profession of a lawyer, is it your view that a lawyer in representing a client will always share the views of the client?

Mrs. Hunter: If he is representing them on a matter before a judge, I would imagine he shares their views. He is presenting their views to the judge. I do not know if it is important whether or not he shares them; he is acting on their behalf.

1230

Mrs. Sullivan: All right. If he is acting on their behalf in a professional capacity, does that immediately mean to you that he will be biased in relationship to the argument he is presenting in a court as a professional on their behalf?

Mrs. Hunter: Most probably he is. This is a very hypothetical situation. To the public's mind, if you were sitting in the courtroom listening to the lawyer argue for his client, you would imagine that he held their beliefs, yes, that he was biased on their part. I am looking at it from the public's point of view. If I was sitting in a courtroom and a lawyer was acting on behalf of a client, presenting a case before a judge, in my perception of that I would think yes, he was biased towards that client.

Mrs. Sullivan: Can you just speak further about what your advice is to this committee relating to the public perception of bias?

Mrs. Hunter: I go back to the same point that I have made before, that if cabinet members are going to be sitting in a quasi-judicial capacity, they have to examine their past close involvement. If something comes before them that involves the party they represented, then I think they have to excuse themselves. Otherwise, the public will perceive them to have been biased towards their former clients or the former group they were involved with.

Mr. Chairman: Thank you very much, Mrs. Hunter, for coming before us this morning. I think your appearance has been extremely beneficial, particularly since we have a decision on a matter that came before Mr. Aird.

I want to ask members to stay behind for just about five minutes for an in-camera session.

Mr. Faubert: Mr. Chairman, on a point of order: We invited Mr. Smither to stay and listen to the presentation. I think we should also, just on that point, invite him to comment further. I think he has an additional comment, specifically, because the testimony of this witness leads him into a further point that he wished to clarify before the committee.

Mr. Chairman: He wants to clarify one?

Mr. Faubert: That is right.

Mr. Chairman: OK. If it is OK with members, I am sure it will not take long. We would be glad to hear from Mr. Smither. Thank you again, Mrs. Hunter. We appreciate your coming down and for the benefit of your views on this very important matter.

Mr. Smither: If I might add a thought based on what I have heard

hear, the point the young lady is making is very well made. It simply solved too. If you confine the body of the act to pecuniary interest and you add a new section to the act saying that where the member is acting in a quasi-judicial capacity, what you are doing in effect is codifying the common law rules that exist now. When the member is acting in that capacity and there was a reasonable apprehension of bias, they shall abstain from the decision-making process.

If you add that to your statute, you cover the point that the last witness was making and you also remove the burden from the members of having to contend with the question of apprehension of bias in all other circumstances. Limit it to the quasi-judicial capacity. Frankly, I think that is a reasonable solution to it and is workable and would answer this witness's objections.

Mr. Chairman: OK. Thank you, Mr. Smither. If members will just remain behind for an in camera session for no longer, I am sure, than about five minutes, then we can deal with that. We will have to ask everyone else to leave the room.

The committee continued in camera at 12:35 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

WEDNESDAY, JANUARY 13, 1988

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. J. M. Johnson

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Klein, Susan, Legislative Counsel

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

James, Richard

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, January 13, 1988

The committee resumed at 2:11 p.m. in committee room 228.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: I call the committee meeting to order. The only witness this afternoon, and the last witness for the hearings, is Mr. James. Will you come to the table, please? He has a brief, of which you have a copy before you. Following your presentation, if there are questions, we can entertain them. If not, we will go on to other matters.

RICHARD JAMES

Mr. James: Thank you, Mr. Chairman. I hope there will be questions.

Ladies and gentlemen, when members of Parliament, MLAs and members of municipal councils give themselves raises in pay and additional perks, they compromise their ability to be tough with employees who threaten to go on strike for more money and shorter hours. If elected politicians only had a serious desire to serve the public, they would set an example by not taking more pay. Until that change happens, all these politicians who help themselves to tax money are guilty of conflict of interest.

When MPs in Ottawa gave themselves indexed pensions about 15 years ago, Colin Brown, founder and president of the National Citizens' Coalition, ran full-page ads in the papers warning us that many individual politicians would become entitled to \$1 million in indexed pensions. That is becoming more clear every year. The pension was said to be only 13 per cent funded by the recipients, those who qualify for the pension in about six to eight years. Considering promises to reduce the deficit and the \$300-billion debt, then taking indexed pensions can be seen as a conflict of interest.

When Air Canada ground workers went on strike for indexed pensions a few months ago, airports were shut down. Ground workers knew the politicians could not order them back to work, because they were merely demanding what the politicians had given themselves.

Conflict of interest is obvious everywhere, but the exception was 48 years ago, when many people volunteered to risk their lives for Canada. Air crews in particular kept ignoring safety as they went out again and again to finish a 30-trip tour. They knew only too well that many were lost trying to finish a 30-trip tour. They showed no conflict of interest.

Those in the navy knew that they would be in danger every minute at sea. Why bring that up? Because in about 1943, shipyard workers went on strike on our east coast and refused to service vitally needed ships. They were indifferent to the welfare of sailors trying to cope with German subs. In other words, they were guilty of conflict of interest. The unions continue to push their interests to the extent that they have hobbled Canada, making us a branch plant type of economy.

When fewer than 100 grain handlers can endanger the welfare of prairie farmers and the reputation of Canada, there are no politicians who can point to themselves as an example of unselfishness and order those grain handlers back to work. When members of the Legislative Assembly decide to study something and plan meetings such as this, very few people know that you pay yourselves something like \$70 or \$90 a day, and about \$28 for dinner. Did you not try for \$150 a day a year ago, in addition to your annual salary? Whose interest is considered first?

Why not, when the Legislature is sitting, devote a day or two a week to meetings such as this, or set aside one morning a week or one afternoon a week for the public to come and speak to you on the subjects under discussion?

I have a few points to make which I did not type. I only got a call this morning at about 9:15 saying that I could come here this afternoon, and I had my semiannual appointment with the doctor for 11 o'clock. I did not get back until 12:30 and this is the work of a very short time this morning and this afternoon. I understand that the police are setting another example of conflict of interest. We heard last night and again this morning that they are refusing to do their full job because of something they are angry about. I think it is in connection with the public. Does anyone know precisely what they are feuding about?

Mr. Chairman: It is another matter. It does not pertain to this piece of legislation which is before us. I think we should direct our comments to this piece of legislation.

Mr. James: Which is conflict of interest.

Mr. Chairman: As far as members of the Legislature are concerned in conducting their duties.

Mr. James: As far as the members of the Legislature are concerned, yes. Maybe I will be able to go some place and appear before a public meeting where the police are griping. I was knocked down by a car two years ago and I have a file that thick about it, and they would not charge this woman with anything other than failing to yield.

Mr. Chairman: Thank you, Mr. James. I wonder whether anyone has any questions with regard to his presentation today.

Mr. James: I said I hoped there would be. I hope I have left something for them to question me on.

Mr. Chairman: If not, thank you very much, Mr. James. I appreciate you coming before the committee and having the benefit of your views on this matter.

Mr. James: I hope you will consider the last paragraph, rearranging it so that hearings such as this do not involve extra pay.

Mr. Chairman: Thank you. When is the Attorney General expected to come?

Mr. Offer: It is my understanding he will be here this afternoon.

Mr. Chairman: He indicated yesterday that he would be here. Is there any item members want to discuss in the interim until we find out when the Attorney General will be here?

1420

Mr. Breaugh: We did indicate earlier that we would like to see, as soon as possible, those amendments that will be put forward by the Conservative members. Could they give us some indication as to when we might see those?

Mr. Eves: We were discussing those before we came in here again. We discussed them yesterday afternoon and we hope that at least the first ones would be ready around 2:30.

Mr. Chairman: That will be shortly. Would you have them all today, Mr. Eves, essentially all of them?

Mr. Eves: I do not know if that is going to be possible or not, Mr. Chairman, but they will be coming out as they are printed, I guess, all afternoon.

Mr. Chairman: We had hoped to have a general discussion regarding some of the matters you had wanted to ask the Attorney General (Mr. Scott) questions on that had not been dealt with either yesterday or the previous day. If we can do that this afternoon and have those amendments--

Mr. Philip: Then aim at clause-by-clause tomorrow.

Mr. Chairman: I am at your service here. We could start that tomorrow, if you like. There was some discussion earlier today among two of the caucuses that they might want a little more time to reflect on the various amendments that were before you. How much time you need for that is one thing.

The other thing I think we should clarify is that I understand there will be no meeting on Friday. That was discussed earlier, and the decision was made that we not have a meeting on Friday if we had to meet next week. It appears that we will have to meet next week. Therefore, there will be no meeting this Friday, and some members have already gone ahead and made other commitments. So there will not be a meeting on Friday this week, unless the committee decides it wants to meet on Friday.

Mr. McClelland: --a few minutes so I can get a handle on what we are doing over the next week or two or whatever. Out of courtesy to some other people, I also have to contemplate what we might be doing. So I would appreciate that, if we could.

Mr. Breaugh: If I could, I think, too, it might be useful to clarify this. We are all getting pressure to be in other places, attend other meetings and look after constituency business. I had originally cleared this week to try to process the bill in a week, but it is apparent to me that we are not going to do that, and so I have made other arrangements for Friday of this

week. Now, I need to know this afternoon, if that is possible, what the committee has in mind for next week. Like many members, I am going to have a very busy vacation, and I would like to know, and so would my constituency assistant, when I am going to be available for various appointments in the office and various events back home. It would be very helpful to me if you would decide now what your proposed schedule is for next week.

I had originally set aside this week. That was changed and we have made arrangements to do other events on Friday. Friday, in my view, is out. I would be prepared to come back Monday, Tuesday, Wednesday and Thursday on the faint hope that we might get through the bill in its entirety by the end of next week. I would be prepared to clear the five days next week. I have difficulty with that if it is apparent that we are going to go on into the following week, because things are just backing up. I know everybody has the same problem. I really do not care what your schedule is for next week, but I plead with you to tell me now so that I can inform people when I am available to do other events.

The other comment I would make is that while I would very much like to get going on the bill, I am aware that it is going to be fruitless unless we see all of the amendments on the table and can judge where they are going to fit and what adjustments to the bill will be made. I have tried to put our amendments forward. I appreciate that we do not draft the amendments, but we do make the political decisions. There is a little bit of hesitation here, but we have, for example, some discussion papers from the ministry. I am interested in knowing which of those proposed changes to the act the minister is serious about, and so he has to make some choices. We will have to see the amendments proposed from the Conservative Party. Although we have a rough outline of them, we are at that stage where we are going to be proposing actual amendments to the act, and the minister will, I think I heard him say, accept some amendments. It would be ever so much better if we spent a little time initially kind of sorting what might be proposed so that if people want to make the political argument, they always have that right to, but if the amendment is going to carry and will become part of the bill, I am not anxious that it be something which causes problems later on because not enough time was taken in drafting.

My preference would be to keep things a little loose for today and for tomorrow until we have a pretty clear idea of what all the amendments really mean, where they might fit and how they will fit together. Then I would leave it up to the ministry, frankly, whether they want one day or two or three days to go through all the amendments, as they will be proposed and where they will fit. I think we might be better off if we slowed the process down a little bit at the front end to facilitate going through clause-by-clause. If you want to, we can start clause-by-clause tomorrow, but if we start passing things and the ministry staff come back in next Monday and Tuesday and start saying, "The amendment you passed last Thursday does not fit any more," or, "It causes nine more amendments here," we will not have done very much good for anybody.

I would like to see all the amendments on the table, for starters. I would like to see an assessment of what the government finds is useful to it. I am not going to preclude any of us making a political point or two along the way, but if it is actually going to be accepted by the government and become part of the bill, I think it is our obligation to make sure it fits appropriately. I am aware, for example, that with some of the definitions we were discussing this morning, it might be advantageous to split sections or clauses within the bill. It might make it a bit easier in the long run if we did that process thoughtfully rather than quickly.

I see two or three options here. You can quickly go through clause-by-clause, but I predict you will be doing the same thing again next week, or you can go through in a general sense, where the amendments are being proposed and how they will fit, and give the ministry staff a little bit of time over the weekend to sort through how it might be drafted, and then, perhaps on a Tuesday, Wednesday and Thursday schedule next week, proceed rather nicely through the bill. I have no objection if you want to sit on Monday.

Mr. McClelland: To add in terms of our deliberations, in utilizing our time there are probably sections that would not realistically or in all probability be impacted by any proposed amendments and we may be able to deal with those and utilize our time this afternoon; for example, just giving proper consideration to the creation of the office and so on. I think some of those things would perhaps be less potentially contentious or given to lead to proposed amendments. We may be able to get some of those off the table, so to speak.

Mr. Chairman: It might be helpful on the basis of that to have the various parties lay out what they consider to be areas where they might not be able to support the bill in its present form and where they are thinking of making certain changes to give the other members a chance to think about those changes. We might expedite it in that fashion. The other alternative is that I know some people have some other things they want to do and we might even be able to put in an evening or two to expedite it, if you want to do that, if you are interested in that.

Mr. Breaugh: Just to explain ourselves--I guess we had better--I do not know how other members are setting up their timetables in the next little while but I have a pretty jammed-up workload on three different committees, so the evenings are devoted to things that normally would happen during the daytime. I am afraid that although we could probably do one evening meeting if you want to, I would need some notice on that. It is going to cause me some difficulty, quite frankly.

What I think might be useful, although I would prefer that the Attorney General be here, is that I think we could go through a very general discussion outlining the areas where we have proposed amendments or intend to put amendments, see where there is consensus and then try to draft appropriate wording that satisfies all three parties. That might be a useful exercise. I have tried to lay out for you that there are basically only two areas where we have major amendments and I have put those amendments before you.

They have to do with giving the commissioner the clear power to cause someone to divest his interest in a firm, or it could be in some other kind of holding. I sense we have some consensus around that concept. The acting commissioner, for example, made it fairly clear in his presentation to the committee that he believes he should have that power and that it should be clarified in the proposed legislation.

If the Attorney General's response is, "You could always get rid of it anyway," I would simply suggest that this misses the point entirely. One member of the assembly could always do that. You always have the right to sell your interests, I suppose. That is not the question. The question is, where the commissioner sees a clear conflict, does he have the right to order the member to divest his interest? That is not nearly so clear in the act. The

amendments that I have proposed in that regard seek to clarify that. If they do not, I would appreciate any assistance from ministry staff in doing that.

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The other area of major concern that I have, quite frankly consists around--I sense a need to begin in this bill some minimal registration process of those people who refer to themselves, or who I call, lobbyists, whether they are called by that name, or consultants, or something else. In the minister's initial responses, I heard him say that he essentially feels that is a different matter under different legislation. I would be interested in hearing what that is going to look like and when, but I tell you quite frankly that I am very reluctant to leave that matter.

I cannot conceive of how a commissioner, for example, can do his job when he has absolutely no formal lists of any kind. So I would grant that the amendments which I have proposed around the registration of the lobbying industry per se is not exactly the be-all and end-all. But I would argue that we need to make the first step and that is the first step. However humble, slight and faulted it might be, something of that nature needs to be put in this legislation now. Until such time as we have a bill which, in a larger sense and perhaps in a more structured way, attempts to identify, regulate and otherwise tell us what is going on with those who might be called "lobbyists."

So those are the major arguing points that I have, and if we are sufficiently moved--and my caucus has agreed with it--to put forward what I would consider substantial amendments.

There are a number of other areas where I believe some rewording has to be done and where some further definition has to be supplied. We were reminded again this morning that attempts in this bill, for example, to do a private interests definition, cause some problems. With some surveying of the municipal conflict-of-interest legislation, or among ourselves, we probably could do a better job at wording those definitions.

The minister, in response to presentations, previously indicated that he could probably do that too, or there are ways where you could pick a better word and lay it out in a slightly better fashion.

I would agree pretty totally with what Mr. Smither had to say this morning. I think that the two or three larger things which we have to keep in mind are, first, that this is not a bill designed for the convenience of the members. That is not the purpose of the exercise. The purpose is to provide legislation which does do that as a byproduct, but essentially it is in place to assure the people of Ontario that we are sensitive to conflict-of-interest allegations, sensitive enough that we have put in place a process to handle them and, very important, part of that is precisely what we were dealing with this morning. Whether there is a real technical conflict that occurs if the perception occurs, we still have the problem.

I think this morning we had a unique opportunity to kind of see--I do not recall as a member here an occasion when legislation was being both proposed and enacted at the same time. We have had a little opportunity for hindsight here. The bill that is being proposed, or a version thereof, has actually been in operation for some period of time.

We had, for example, our first instance of an allegation being made. It is interesting that this particular one is not about somebody doing something for pecuniary interests. There was no indication that I got that anybody really did anything to make more money. The allegation is around whether there was a reasonable and fair process at work. So I think we should take advantage of that.

Certainly on the testimony we heard this morning, the reality may be one thing, but the perception remains that this process does not work very well. I would put to you that a similar situation, in my mind at least, exists around the disclosure format. I do not question John Black Aird, as a citizen and a great Canadian, and all of that. I am sure when he took the proposed legislation and implemented it, he truly felt that he had done all that he needed to do, or the best that he could do. Yet the end result was a disclosure package which gave me very little in the way of what I consider to be pertinent information.

I know that a spirited defence will be raised that yes, the intent of the law was fulfilled, the intent of disclosure was fulfilled. Here are all the numbered companies. You can get a lawyer, go and do research and find out who has interests in what. I would say that the overwhelming perception overrides that. Although the intention may have been very much on the good side and there certainly were piles of paper tabled somewhere, the piles of paper do not tell you anything.

I will just conclude my tirade here on this. There may be places where it is really creditable to say that a member has no liabilities, and it may well be technically correct to say that someone who is a member of this assembly has absolutely no debts anywhere in the world; but in my community that statement would be seen as being not truthful. There is no one I know who does not have a mortgage, a car loan, a Visa loan; who does not owe some money to his father, his mother, the baker, the guy down the street. We have assets where I come from, we own some things and we have liabilities. We owe money to people, and when you devise a system which in effect says, "Here are all the assets that I have," and it is unintelligible, people where I come from look at that and say: "Somebody is trying to pull something over me here. They are listing all their assets on pieces of paper there, but there is no dollar value established to it."

I listened very carefully to Mr. Aird's argument and I see his point. This is not about whether you have one share or 1,000 shares in a company; it is about whether you have shares in a company. However, I could not sell that in the south end of Oshawa as being fair and reasonable, because my people would immediately say, "Well, that is like saying about a guy with a buck in his pocket and a guy with \$1,000 in his pocket that both of them have money." It is technically correct, but they would see that as being not truthful.

So I am going to try, as we go through the bill clause by clause, to draw the perception and the reality a little closer together, because I believe that in the end what we must try to do with this is to get something where, if we do not get total agreement on everything--that will not be unusual around here--at the end of it there has to be reasonable consensus that what we have here is a legislative package--we can all disagree with parts of it; that will be fair. But if we do not all agree that it is a reasonable bill, we are in trouble. If we, starting out the process, do not accept that this legislation is a fair and reasonable way to proceed, by and large we are in hot water to begin with.

If we design something that all of us and all of our staffs think is just wonderful and everybody in the rest of the world thinks is just lousy, we have missed the point completely. I would suggest that if that is my conclusion, certainly at the end of this process, I will find the thing not supportable at all, because that would be designing a conflict-of-interest law which is totally designed for those who might well be in a conflict-of-interest position. That is like designing your bank robbery laws for those who rob banks. It is not exactly a sensible thing to do.

I think it would be useful to spend some time this afternoon going through the areas of concern that each of the members and each of the parties has. I hope by tomorrow we will see the actual major amendments that will come in and we can take some time, come to some agreement and proceed, I hope, on a consensus basis to process this legislation in three or four days next week.

Mr. Eves: I agree with Mr. Breaugh's comments of a few minutes ago. I think the committee should come to some consensus as to when we are going to sit and what approach we are going to take. I have no problem with discussing the bill or proposed amendments or sections of the bill in general terms today. In fact, I think that would probably be helpful. It would probably give us all a sense of what amendments have any chance of success or do not have any chance of success. I will be phoned back here in a few minutes. I have tried to get a handle on whether we can have all our amendments ready this afternoon or not.

Mr. Chairman: It would be helpful--

Mr. Eves: For sure we will have a good many of them ready this afternoon. Once we have done that preliminary exercise, it would be my sense that we should try to move into clause-by-clause as quickly as possible, because it may well take three or four days next week to do that.

Mr. Chairman: We could start clause-by-clause, and where we found that there was not consensus or a party was not particularly prepared to go ahead. We could leave that and go to the other areas, deal with those we can deal with and get consensus on, and then come back and deal with the ones that are somewhat more controversial and where a little more time is required in order to get the different positions of the various political parties.

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Mr. Breaugh: Excuse me, Mr. Chairman. I do not think we can do that. I think that as we go through this bill and develop definitions and who does what, it interplays all the way down the line. I do not think that with this particular bill, there is very much in it where you can do the consensus things today and come back to the contentious issues tomorrow. There is a sequence to this thing which cannot be denied. I think you are going to have real trouble if you start cranking up clause-by-clause debate on the bill. We will be constantly in a position of backing up and making wording changes all the way through it. It is going to be very difficult to do that on this particular bill.

Hon. Mr. Scott: Can I make a suggestion for the committee's consideration? Obviously, you want to have a general discussion. It seems to me you might want to begin by discussing conflict of interest because that is the key issue. If we do not understand what we are including or excluding in that, then we are going to be bedevilled as we go through deciding on a process and the disclosure and so on.

I would have thought you could really begin by having a good discussion of section 2. I have the sense, and I am not immune from this, that we have not all yet grappled with precisely what we mean by that. Every time someone makes a submission, we hear a new perspective and they are all important. I think in the light of what you heard this morning, we could have a very useful discussion about what was intended, especially if I could smoke, but I guess I cannot.

Mr. Chairman: Maybe it would be a good time for us to hear from Cornelia Schuh with regard to some of the drafting problems that might be encountered. Cornelia, do you want to--

Hon. Mr. Scott: This may be helpful to the committee. It might be useful--I do not want to preclude anything--to have a view of what the government intended by the definition, particularly in the light of what you heard this morning. That is not to say our minds cannot be changed, but I think you should know what we intended. If you agree with our intention, then it is a question whether we did what we intended. If you disagree with our intention, we can then discuss amending it.

However the language of the exercise is discussed, there are sort of four topic heads that seem to appear in the literature, in the newspapers and on the street: actual conflict of interest, apprehended conflict of interest, perceived conflict of interest and bias of some type. These are all generically thought to be sort of bad things which we should be dealing with.

Let me begin by telling you that the intention of the draftsmen of the legislation was to cover off the first three by defining conflict of interest in a relatively broad way and allowing a commissioner to decide whether there was in fact a conflict.

If you take the Parker definitions, we have no doubt covered actual conflict and apprehended conflict. The question is whether we have covered perceived conflict. I say that we have in our definition because it is the perception of a conflict that triggers the allegation. We have not allowed the perception to trigger the allegation if it is merely a perception of a citizen on the street, but the perception of a member of the Legislature--"I think that person is in a conflict"--is covered in the sense that this triggers the inquiry process. The commissioner, or whatever process you end up with, at the end of the day says whether that perception is justified or not according to the standards of the act.

You cannot root out that perception, nor should you try. It is not an attempt to try to persuade people about things they do not want to believe. If you do not have a method for testing whether the perception is a correct one or a reasonable one, then conflict of interest is entirely in the eye of the beholder.

It is in that sense that we have covered a perceived conflict of interest. When one member of the Legislature perceives about another that he is in conflict, the inquiry and the examination take place. If he has placed himself in a position that the act does not permit, then the finding is made against him. If he has not, the perception may remain on the street, but we simply say: "Sir, your perception is not agreed to by the commissioner. We are not saying you do not hold it in good faith."

There are lots of people who write to me who perceive I have a conflict of interest on almost all educational matters because I am a Catholic. They

are entitled to hold that opinion and, indeed, within limits I respect it. I do not believe that any commissioner in the world will ever persuade them that perception is false. Therefore, the mere fact that they hold it should not disentitle me to vote in the Legislature.

The first three are covered. Now we come to bias.

Mr. Polsinelli: How is apprehended covered?

Hon. Mr. Scott: Apprehended, if you read Chief Justice Parker, is just the same as actual only it is at the early stage when you have not proved it. It is a lawyer's distinction. I do not read any--

Mr. Breaugh: (Inaudible) right away.

Hon. Mr. Scott: I am sorry having damnified him in that fashion, but I think apprehended is simply he understands as actual conflict but not yet established. Perceived is something different, something that is in the mind of an actor who has formed a judgement of his own. The issue is not whether he is entitled to have that judgement--of course he is--but whether that judgement is, according to any objective standard, correct or simply false.

I am sure we all agree, as a matter of principle, that the disentitlement of a member of the Legislature to vote cannot depend on whether there is some unresolved perception out there that the member is in a conflict-of-interest position, because that will always occur.

People think NDPers are in a conflict-of-interest position because they get trade union support. People think Conservatives are in a conflict of interest position because they get business support. As we raise our own funds, colleagues, we do not have to worry about those.

Mr. Breaugh: Tin cup by tin cup.

Mr. Chairman: Directly from the printing presses in Ottawa.

Hon. Mr. Scott: We Liberals understand the difficulties that the other two parties have on this subject and we have difficulties of our own.

We come to bias. I think with respect to bias it is very important to understand exactly what we are talking about. First of all, it is a judicial concept bias. It is a concept invented by the judges to regulate their own process. What it means is a predisposition to decide in a certain way. Some of it may be in a sense perfectly legitimate; some of it may be malicious. But the perception is---I should not say perception---the expectation of the public is that a judge deciding a case will come to it free of any prejudgement about the nature of that case.

For example, juries are expected to do the same thing. We ask juries if they have ever read in the paper about Mr. X who is being tried, if they have formed any preliminary opinion about his habits, if they thought perhaps he was in some kind of trouble. If the answer to any of those questions is yes, they may be entirely right but they are biased in the legal sense. They have made some kind of prejudgement about the issue the judge is going to decide. That is what bias is. It has never been used in the legislative context of which I am aware, for reasons I will come to in a minute, but always in a judicial context.

The reason it has never been used in the legislative context is the reason that Mr. Breaugh gave the other day, that we are expected to bring with us certain biases, hopefully good ones. One group will be biased to advance the interest of working people, one group may be biased to advance the interest of the business community. It is not good or bad to be on either side; they are both simply prejudgements based on thought, consideration and reflection about how the best kind of society can be achieved.

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Those biases are, in a legislative context, not only not wrong; they are also the very thing our electors ask us about when we go knocking from door to door. When they ask us about our stand on capital punishment--and I know none of us say that it is not a provincial matter, but when they ask us about those things, we tell them what our biases are on that subject because we do not regard ourselves, when we come to vote, as judges. We regard ourselves as representatives of the people who have elected us. That does not mean we always have to follow their advice but we are perfectly entitled to if we want to and it may be absolutely right, from case to case, to do so.

So let us get rid of the notion that any member of the Legislative Assembly is expected to be without bias. We are not judges, in that sense, and it has never been said we are. We are to bring our biases--hopefully they are good ones, not bad ones--to the exercise. That is why we want people of a variety of backgrounds. Otherwise we just have the brightest or the best. We want people who represent communities to come forward.

Mr. Breaugh: A lot of guilty consciences.

Hon. Mr. Scott: There have been a number.

How does the bias issue arise? It is very important to understand this in the light of what has been said this morning and on other occasions. Every once in a while, a person will feel aggrieved by a decision that has been taken. It may have been taken by a junior civil servant in removing a licence fee or removing a licence, it may have been taken by a provincial court judge, it may have been taken by the cabinet, it may have been taken by the Legislature. But under that Statutory Powers Procedure Act, anybody who is affected by a decision can apply to a court for, in general, a determination about whether that decision is correct.

The court has said: "We are not going to look at all decisions that are going to be made. We are going to look at"--what the court calls--"quasi-judicial decisions." Again, that is a phrase a court has used for its own purpose. It is not a legislative phrase, it is not something we talk about around here. The court says, "Look, sir, we are not going to hear your case unless we are satisfied that this is the very kind of decision which is a matter of fundamental law we, the court, believe should be made according to court standards."

Courts generally have said that other court decisions should be made according to court standards. That is easy. But they have gone beyond that and they have said that sometimes the decision of boards--not always--should be made according to court standards. For example, on a decision by a board or tribunal to deprive somebody of a right or a liberty or some property, the court might very well say, "We're not saying you can't do that, board, but you've got to do it according to court standards." One of the court standards of course--you hear the other side; there are a whole lot of rules--is that the person making the decision be without bias.

The court is engaged, from day to day, in deciding whether a given decision, whomever it is made by, is one that has to be made by court standards. And it will happen--it has not actually happened yet in Canada but it will happen that some day someone will say a decision of the Legislature has to be made according to court standards. It will be interesting when that happens. It will be a very difficult moment.

People have said, for example, in courts that there are certain decisions of cabinet that should be made according to court standards, and if they are not, the decision of cabinet will be overturned by the court. There is only one such case in Canada, and that is a case called Inuit Tapirisat. In that particular case, just so you will have the background, there was an appeal from the Canadian Radio-television and Telecommunications Commission to the federal cabinet. The applicant for a television licence before the CRTC had gone to very considerable expense to prove his case and to get a licence, or to retain his licence. That licence was the way he earned his money, the way he earned his livelihood.

There was an appeal to cabinet by the bad guys in that case, and the cabinet decided that he was going to lose his licence and be put out of business. The issue in that case, before it can decide that, is: Do we believe that this kind of decision, made by that kind of body, should follow a court standard? In that case the court said yes, that the cabinet, in reviewing a CRTC grant of the continuation of a licence to earn your livelihood as an exclusive television producer in your area, was so important to individuals who had obtained that right and made the investment that the body that tried to take it away could only do so by applying court standards: hearings on both sides, no bias, no prejudgement.

That is the only case, and in that case--the case actually was lost because it went off on some other point--the court made that statement. It had never before been said in a court in Canada, and there has been no other or subsequent case which has attempted to apply it either to a Legislature or to cabinet.

Now, in that context, where do we stand in this legislation? There will be some people who will say, and I sympathize and understand, that we should build into this act some kind of prohibition against exhibiting bias in a quasi-judicial decision. Let me just begin by saying that if we say that, we will not know what we are talking about, because our quasi-judicial decisions, if any, in the world in which we work, have never been decided and cannot be decided by us, and we cannot direct the court. It will be for the court to decide which of our decisions in this world, if any, are quasi-judicial. And if we decide in our legislation that only (a), (b) or (c) are quasi-judicial, that is not going to mean a pinch of you know what to the court. It is going to ignore that and add to it or subtract from that list as it judges to be right.

Now, if we go further and say that in cases where there is a quasi-judicial decision, which we define as being the following cases, you must exhibit no bias, what do we mean by bias? Well, we mean prejudgement. But the courts have always said that it does not mean simply prejudgement, it means prejudgement in the particular circumstances of the case.

I acted in a case a couple of years ago where the chairman of the labour relations board came from a firm in Toronto. He was appointed full-time to the board. One of the first cases that came before him was a case in which the Teamsters were an applicant. His firm had acted for the Teamsters, he had

taken cases for the Teamsters, and the allegation was made, after he had decided the case, that he was biased, that this was the kind of decision that should be made only by a quasi-judicial body, as the court had decided, and that he was biased because of that background. The court said yes, it is a quasi-judicial decision but that, having withdrawn from his firm, he was not biased.

So the point I make to you is that these definitions of "quasi-judicial" and "bias" are extraordinarily complex and they cannot be made by us, because a court will ignore what we say about it and decide its own cases when those come up.

The solution is a simple though sometimes expensive one: That is to say, the legal aid is available. That is to say, if you want to assert that a member of the Legislature or a member of cabinet was biased in making a decision in the Legislature in committee or in cabinet. You go to court, tell the court what kind of case it was, what was at risk and try to persuade it that it should regard that occasion as a quasi-judicial occasion. What we tell them in the statute will not cut a bit of ice with them one way or the other. They are not going to allow us to cut down their jurisdiction. Then they will decide whether that actor in those circumstances, in those conditions, was biased. What we say about bias in our legislation is not going to cut one bit of ice one way or the other.

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I say to you that I understand the motive, but the effort to try to predict what a court would do with respect to bias on an occasion of unqualified privilege is a hopeless exercise in which you cannot win. Look at what would happen if you tried to do it. Let us assume you did it and you judged X to be biased in acting in this way on that issue and you evicted him from the Legislature, and the court came along and said: "You are dead wrong. It is not for our court to say who can be in the Legislature, but we do not agree with the Legislature. We do not think that was an occasion of qualified privilege."

All I am saying to you is that this is a court issue for court purposes. While I understand the motive, it is completely inappropriate to what we do. I expect my colleagues to exhibit biases. I hope they are going to be intelligent, thoughtful, persuasive and founded in the interests of their constituents, but they should have them. Whether they should have personal interests is what we are concerned about, but that they should have biases is surely almost a given.

I wanted to make that point because it is my concern that it would be a major error of principle to try to regulate for the court or for the Legislature an exclusively judicial concept that has never been applied by anybody except the court. It is a mug's game.

Mr. Breaugh: Just on what is a conflict of interest, which might be useful and might sort out some of the amendments that get proposed later on, for my part, I am impressed with some of the things Michael Smither had to say this morning. I am impressed because I agree with him.

Mr. Chairman: You have a bias.

Mr. Breaugh: I have a bias. I have thought about this a great deal and I think part of the trick of what we are trying to do here is to get at

what is possible and get rid of what is unreal. In my view, to attempt to identify, codify and describe minutely every conceivable conflict of interest that might occur to a member here is ridiculous. It cannot be done. Most people would see it as irrelevant. I think no one really cares, for example, if a member should profit from something and the end result of the profit is a \$1.95. Who cares? I do not.

I think I am taking quite a different position from Mr. Aird in his conclusions on this value stuff. I believe one of the criteria that makes it a conflict worth bothering with is value. I am quite prepared to go at it in two or three definitions because I think the one most people think of is pecuniary interest, that you make a lot of money over the decision you just took. I believe, off what he said this morning, off what is in the Municipal Conflict of Interest Act, that we can do that.

Hon. Mr. Scott: I want to make one other point which I think is raised by the point you made the other day about the pecuniary.

Mr. Breaugh: Yes.

Hon. Mr. Scott: Before you get to pecuniary, it seems to me you have to define what was intended by "private interest."

Mr. Breaugh: Yes.

Hon. Mr. Scott: First of all, let us understand that this has nothing to do with the disclosure or upon whose behalf the disclosure was made. "Private" is to be distinguished from "public." If you advance the interest of your adult child, your live-in lover, your mistress or anybody apart from the public specifically, anybody private to your life, you are then in a conflict-of-interest position. In that sense, the definition is very broad. It allows the commissioner to decide, "Look, by seeking to advance the interest of the man who lived up the street, that was a private as opposed to a public interest and that would be an occasion of conflict." The fact that for none of those people do you have to make a disclosure statement is just beside the point. So if it can be established that a cabinet colleague voted on a matter to advance the interest of his grandmother, it is a private interest.

Now, we have made it very broad. That is why we chose "private" and why we left out "pecuniary." To put in "pecuniary" is to reduce it, and there is much to be said for it.

Mr. Breaugh: OK. Here is kind of where I am--

Mr. Chairman: Mr. Polsinelli has a supplementary.

Mr. Polsinelli: I am intrigued by your definition of "private interest" to the man living down the street. I happen to be presently representing before the Workers' Compensation Board a man who happens to live down my street. Am I contravening section 4 by attempting to use my office to influence a decision that would advance my private interest, my private interest being the man who lives down the street?

Hon. Mr. Scott: Have you ever appeared before the Workers' Compensation Board before?

Mr. Polsinelli: Yes.

Hon. Mr. Scott: You have no influence.

Mr. Polsinelli: No. I mean, you may want to--

Hon. Mr. Scott: No, but the answer very simply is that the interest of a constituent would not be judged by any commissioner that I can imagine to be the advancement of a private interest. All of us are engaged in the business of trying to get our constituents into housing and all the rest of it, and to get them benefits which we believe reasonably they are entitled to either as citizens or under the statute, or should be entitled to if they are not. That would not, I believe, be regarded as a private interest, because it could not be said that the constituent was in some kind of personal relationship with you.

If you tried to get your grandmother to the head of the line for Ontario Housing, then it seems to me the commissioner might say, "You were advancing a private interest, Mr. Polsinelli, when you did that." She was not just a constituent; she did not take her place with the others. She was getting an advantage because she was connected with you.

Mr. Polsinelli: It is interesting that you, on one hand, give the example and, on the other hand, show how that example is not appropriate in the situation that I bring forward. It seems to me--

Hon. Mr. Scott: Well, the other distinction from the Workers' Compensation Board case is that you are appearing there as a kind of counsel. The board can consider what you say. You are not making any decision.

Mr. Polsinelli: Let me continue with my point, and it is just a supplementary to Mr. Breaugh's. Quite frankly, I am referring to section 4, which says, "A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest." We are talking about what is a conflict of interest; we are talking about what is a private interest. I would be a lot happier if I could read a definition of "private interest" that was clear, that was straightforward and that I could apply in my everyday dealings. If you have to vary that definition from situation to situation, are we really accomplishing much?

Hon. Mr. Scott: The trouble is--and I have not been here all that long, as long as my New Democratic Party colleagues and the chairman--you are always in this dilemma. Either the language of the proposed bill is too precise and therefore does not cover half the things that you think of later, or it is too general and leaves the decision-making up to somebody else. We are always in that dilemma. Evelyn Gigantes pinned me on it in the freedom of information bill and on the Family Law Reform Act. I think really here, in terms of what private as opposed to public interest means, you could not define the categories at this table with any assurance that you had covered off even most of them.

Mr. Polsinelli: I accept that and I accept that the example I gave is a situation that should not be covered by the act, that it is perhaps--

Hon. Mr. Scott: All right, and it is not.

Mr. Polsinelli: --the advancement of a private interest that should not be in contravention by the act.

Hon. Mr. Scott: But what private interest were you advancing at the Workers' Compensation Board?

Mr. Polsinelli: The private interest of my neighbour.

Hon. Mr. Scott: No, but that is--

Mr. Polsinelli: I was advancing the cause of my neighbour, who happens to be my neighbour, thereby using your example.

Hon. Mr. Scott: No, but you see, the interest is the interest of the member, and "private" modifies the interest of the member. It seems to me that any commissioner would say that you had no interest of a private sense in getting that constituent workers' compensation. You had a public interest as a member in serving your constituents as a group. This constituent popped out of the group because his case was up next.

I suppose as far as you could go is to say, "Well there is a private interest I had there because I wanted to get that man's vote in the next election." That is not regarded as a private interest. That is part of your public role.

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Mr. Breaugh: Let me just put this a bit. I know others want to get in on it. The problem I am having with the "private interest" definition and with "conflict of interest" definitions that are here is that I see us causing problems, I really do. What I think is relevant is money. Did anybody make any money off this deal? Improperly. That is the first consideration. I think we can do that and I think we have had some suggestions on how to go about that wording.

The second concern that I have is I am a little antsy about some of the things frankly that Mr. Polsinelli has talked about. When I mail a letter to a constituent replying to some great vexing problem that he has raised and I have used public money to travel to a meeting, where does the line fall here between my job as a member and something that is a little over the line? Somewhere, and it may be one of those occasions where you have to grandly say, "nothing in the exercise of your duties as a member is considered to be a conflict of interest." There is that problem.

Third, I would prefer to see us do a couple of sharper definitions on pecuniary interests, on the role of the member and that not really being something that is in his or her personal private interests and that it is excluded from this. Somewhere I think too we have to draw the line which says, very much like what you were saying previously, that there is going to be in here not always the opportunity to provide the public with the perception that everything is 100 per cent the way they want it. It cannot be that way and I think we ought to say so.

I am mindful that some of the examples that have been used in here really have a whole lot of ramifications to cover part of the ground that was covered this morning. I am one who has always been unhappy that an agency of the government like Hydro, has some of its decisions ratified by the cabinet. It has always struck me as being a bad process and a wrong one, particularly since most of the time the decisions are taken in private and made public after they are done and there is very little that you can do. I do not know if this bill is the way to get at that problem.

I do not know if we can resolve that. There are parts of the parliamentary process that really do stink, but by and large the parliamentary process has served us reasonably well.

Hon. Mr. Scott: I should tell you that we have no difficulty with pecuniary being built in there, as long as you understand that you will be reducing, and I think perhaps significantly, the occasions in which a conflict will be judged to be a conflict.

Mr. Breaugh: Yes. I think once we do that we then have to move to a second definition which says and this is the other category of things where a conflict does exist. The problem I have with the wording you have done here, both in section 1 and section 2, is that it is so broad as to really, to use my technical word, fuzzify the issue. Nothing will be a conflict because a conflict can be so many things.

To look at the way you have drafted section 2, for example, one does not have to make money improperly here, one only has to have the opportunity to make money. To be in the wrong place at the wrong time when a decision is made. Sure I do not have to do anything, that is the way we have done it.

Hon. Mr. Scott: As you are discussing it, let me give you an example. Let us assume that you have a brother who is in the contracting business. He wants to bid on a government contract. You want him to get the contract. You are not going to make any money on it, but you want him to get it because he is a nice guy and if somebody is going to get it, it might as well be him. There is a bidding process. The key thing is to get him in the last round of three bidders. So you jiggle the system so that he gets to be one of the last three competitors. Now, he has not paid you off. He has not given you a cent and if pecuniary is in there, you have not done anything wrong.

Mr. Breaugh: That is right.

Hon. Mr. Scott: The second thing is, if he does not get the contract, in other words, if you have got him up to that plateau and he does not get the contract, then you have not done anything wrong because even he does not have any money. If it was your wife, you would not have a conflict because at the end of the day, though you did everything you could to fix it for her, she did not get the contract and, therefore, there is no pecuniary interest. Both those situations would be covered under this bill. The introduction of pecuniary removes them both.

Mr. Breaugh: I understand that. My analogy would be this. If a minister of the crown owns the general store in a small town and the town grows because of government programs for regional development, I do not see any conflict of interest there at all, even though he will make money because his general store will probably do better if there is more of a population in that area. If the member owns not only the general store but also the 100 acres that will now become the prime industrial park for that area and the province of Ontario coughs up \$20 million to develop the 100 acres, that is where I see the conflict.

Hon. Mr. Scott: Can I just work through those examples? I take it it is the decision of the government to expand that region, and we have a government decision in which he participated.

Mr. Breaugh: That is right.

Hon. Mr. Scott: The result of the government decision is to make him a millionaire because thousands of people move into the area and his store gets expropriated or has great business.

First of all, I believe that would not be a conflict of interest under the present bill because I think probably the decision is one that affects--

Interjection.

Hon. Mr. Scott: You say it is a municipal decision, but we are assuming for this case it is a provincial decision.

Mr. Breaugh: Yes.

Hon. Mr. Scott: I suspect that the commissioner would say that owning a store and making the decision about regional expansion is not a conflict, because that affects the member as one of a broad class of electors, all the people in that region. We are with you that it would not be a conflict.

Now, if the member owns 100 acres in the same area, the value of that land is going to increase just like the value of any other 100 acres in the neighbourhood. I take it it is your position, as it is the bill's position, that the increase in the value of that land would not be a conflict of interest, because what is the difference between getting your money by selling--

Mr. Breaugh: He is being treated no differently than anybody else in that area.

Hon. Mr. Scott: OK, but if he applies for a loan to develop the land and he votes on it, that is a conflict of interest under our bill, and I think you want it to be a conflict of interest.

The difference when you introduce pecuniary is that if he does everything to jigger that loan so that he gets ahead of everybody else on the list, and he gets the loan not for himself but for his brother and makes no money on it, that is not a conflict, and I think you would want it to be one.

Mr. Breaugh: That is why I need the second definition.

Hon. Mr. Scott: All I say to you is that is covered by the present definition because that would be a private interest. His interest in advancing his brother's economic welfare is a private interest. It is not a personal interest; it is a private interest.

Mr. Breaugh: I think not. I just have problems with the way this is set out. Just to conclude, and let other people pursue it, my problem is the generality. I wish I could take the attitude that the generality will catch everybody. My concern is that the generality will mean it will catch nobody.

Hon. Mr. Scott: Let me put it to you this way. The struggle that we always have between general words and precise words is well known to you.

Mr. Breaugh: Yes.

Hon. Mr. Scott: With precise words, we never catch anybody we intended to catch and we end up catching a whole lot of people we did not intend to catch. With general words, you are not able to predict with any precision what is going to happen.

The advantage of general words, to a certain extent, is to leave decision-making to the commissioner. He takes the general words and looks at the concrete facts of the case, which will be enormously various. You and I cannot even begin to consider the goings-on that will come before the commissioner to determine whether it applies.

Now you conclude that he will not apply it to anybody. I conclude that he will, but he will take the general mandate of the statute, which is a broad one, and will give what the law calls a remedial interpretation. This is to remedy a problem. If he does not, of course, we can come in as legislators and say: "We are going to amend that act. You are not going far enough." In other words, if I had to make the choice you are talking about, and maybe I do, I would favour the general words as opposed to some concrete examples.

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Mr. Polsinelli: On the case Mr. Breaugh brought to light where a minister for regional and industrial development brings a grant to a community where he owns a general store, which has the effect of improving and making the main street much more popular and brings a thousand people and so on, as I recall there was a municipal decision along similar lines. The member of council voted on some type of rezoning for the main street where he owned some type of store. He was found to have a conflict of interest under the Municipal Conflict of Interest Act.

If we read the Municipal Conflict of Interest Act, one of the exemptions is that the member does not have a pecuniary interest if his interest is an interest in common with the electors generally. I think that is very similar to our definition of what "private interest" is. It is not a private interest if it is one that affects a member of a broad class of electors.

I think this is something I alluded to the other day. My problem is that the judiciary defines this exemption very broadly to cover that type of situation. What assurance do we have that the commissioner, in interpreting this section, will not be guided by past judicial decisions and interpreting it as broadly and preventing that type of situation, where a minister of regional and industrial expansion would not be able to benefit the constituency that actually elected him and expects some type of--

Hon. Mr. Scott: I think it is not really very helpful to look at the Municipal Conflict of Interest Act, even though it covers the same subject matter because it goes at the matter in a very different way. We have made the distinction between "private" and "public." We have not followed the Municipal Conflict of Interest Act because it has not been without its very severe critics. As a result of the Parker commission and other work that has been done, we think we can do better.

The definition of "conflict" under the Municipal Conflict of Interest Act reads very differently from ours. It says, "Where a member...either on his own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect" in any matter, "he shall," and so on. Then there are exceptions at the bottom. In other words, the municipal act does not attempt to make a distinction between "private" and "public," and it does not attempt to define "interest" the way we have, I believe, in section 1. Maybe I am wrong about that.

Mr. Polsinelli: I accept your information. I guess my problem is--

Hon. Mr. Scott: Therefore, they need exemptions because they have not built them into their opening definition.

Mr. Polsinelli: One of the other problems I have with this legislation at this point is that conceivably, if we thought hard enough, we could give an example of a situation where a member had a private interest, but acting on that private interest would not be a situation where we would want a conflict situation to arise. Perhaps what we need is some type of discretion for the commissioner where he could at some point conclude that, yes, the member has had a private interest in a particular situation, but that private interest was insignificant or did not affect the decision of the member, or that the type of private interest, even though defined as a private interest under the legislation, was not the type of interest that should be punished.

Hon. Mr. Scott: The way to do that is by expanding the definition of "private interest" under section 1. We have allowed the commissioner fairly broad discretion to decide what "private interest" means, but we have told him that it must not mean a decision that is of general application that affects a member of a broad class of electors or concerns remuneration of members. We have defined it for him to that extent and we could no doubt expand the "does not include" definition with other examples, if you want to.

The key feature here, it seems to me, is that it will be for him to decide, apart from that, what is private and what is public. The reason I think that is good is that we want to keep this act available to cover most of the cases. Surely as politicians, we want a broad law so that allegations that are made can be dealt with.

Mr. Polsinelli: I agree with that and I agree with that whole part of it. I think the commissioner should have the authority to decide what is private and what is public. But I guess, as I indicated, my concern is, what if the commissioner comes across a situation where, under the proposed legislation, he has to determine that an interest is a private interest because of the way "private interest" is or is not defined?

Hon. Mr. Scott: No, he has the discretion. The only thing he cannot do is decide that decisions that are of general public application or that affect a member as one of a broad class of electors are decisions respecting a private interest. But even in there he has some leeway because "broad class of electors" is left to him to be considered.

Mr. Polsinelli: So then I take it you are saying there is no situation where the commissioner would decide that an interest is a private interest which should be punished if in contravention of the act.

Hon. Mr. Scott: Well, I am not going to predict what he is going to decide; I do not even know who he is yet. But I am confident that we have got a reasonable series of guidelines there for him that allow him a reasonable discretion. There may be cases where he will conclude that a matter that I regarded as a matter of public as opposed to private interest is in fact a private interest. I may be wrong when I think that and I basically am content to accept his judgement on that.

Mr. Faubert: Just to expand the explanation, does that mean that "private interest" is inclusive, that pecuniary or economic or financial interest is included within that? Is that taken as a given?

Hon. Mr. Scott: That is a given, as far as I am concerned. A pecuniary interest for the member or a pecuniary interest for the member's family or friends is clearly a private interest.

Mr. Faubert: OK. What else is included in that, because that becomes the sticking point?

Hon. Mr. Scott: What else is included in that is an interest that does not necessarily include a pecuniary advantage for the member. Let me put it this way: It is in the interest of a member to advance benefits for his grandmother ahead of everybody else, and that would be prohibited under our legislation, as drafted. It is not a pecuniary interest for the member to advance the interests of his grandmother ahead of everybody else. His interest in the first case is one of special loyalty to a member of his family. His interest in the second case, when you put "pecuniary" in, arises only if he gets some of the take.

Mr. Faubert: To take it one step further--and this was a point made by Mr. Smither this morning--there is nothing in here that says the interest of the spouse or family is the interest also of the member.

Hon. Mr. Scott: Oh, yes, there is.

Mr. Faubert: Where is that in here? I do not read that specifically. It does not say that their interest is the interest of the member.

Hon. Mr. Scott: No, but it is a private interest. Private interest is the interest not only of the persons upon whose behalf you make the declaration but also of any persons whom the commissioner would regard as private connections of yours as opposed to members of the public whom you represent. At the margin, that is not always going to be a clear line, but certainly all relatives, all persons you live with, perhaps even very close business associates from your past whose interests you might advance to the exclusion of those of members of the public might be regarded by the commissioner as advancing a private interest.

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Let me put it this way: If I got into office and if I did everything I could in cabinet to see that my old law firm got all the government legal work, I think that would be a conflict of interest. I am not making a dime out of it; there is no pecuniary interest to me. I am not going back there. They do not owe me any money and I could not sue them. Knowing them, they probably would not even give me any if I did all that for them. I think it is commonly believed that if I did that, I would be advancing a private interest. What I, in cabinet--and you, in the Legislature--should be doing is not to advance my private associates, but to advance the interests of my constituency, the groups in it and the public generally.

Mr. Philip: Using a different example than the president of the Ontario Federation of Agriculture, supposing the president of the Ontario Federation of Labour gets elected to office. One can assume, because of his experience, because of his background, that he has a "bias," which is fine as far as you are concerned. But surely there is also a personal interest in getting certain things that he probably got his job by advocating.

Hon. Mr. Scott: Certain policy things, subsidies and so on.

Mr. Philip: You are saying that would not be a conflict of interest.

Hon. Mr. Scott: That is not a private interest; it is a public interest. If I am the president of a ratepayers' group and get elected, and I am in favour of stronger zoning bylaws and more rigorous enforcement and I make that case, I am not advancing a private interest. It is true that as someone who lives in the neighbourhood, or as a farmer in your case, I will benefit, but I am advancing a public interest.

If, on the other hand, I seek to advance my second cousin to be appointed a judge, jump all the lines and get ahead of everybody else, I think I am advancing a private interest.

If we put "pecuniary" in there--and I guess I should not be opposed to it, if narrowing this law is what it is all going to be about--then there has to be a dollar benefit to the member. In many of these situations where the public perceives us as doing things that are wrong because we advance our private family ahead of others, there is no pecuniary interest at all. If my brother wants the contract, I will try and get it for him because I love my brother and I want to keep peace in the home, but I am not going to get a dime out of it.

Mr. Chairman: Mr. Eves is next.

Mr. Philip: Do you have a list?

Mr. Chairman: Yes. You were just asking that question.

Mr. Philip: Am I on the list? I thought I was the one who was on the list from yesterday and we were starting with yesterday--

Mr. Chairman: I believe I went over the list of yesterday, just to be honest with you. If you have some other questions--

Mr. Philip: I wanted to ask some questions yesterday.

Mr. Chairman: If you have some other questions, why do you not ask them right now and then Mr. Eves is next.

Mr. Philip: I want your direction on this, because I have a series of questions on various parts of the bill that I want to clarify now.

What I understand that the Attorney General has proposed is that we deal with certain key concepts. Do you wish me to deal with the broad numbers of questions I have on different parts of the bill, or simply confine my questions now to section 2 of the bill?

Mr. Chairman: Let us stick with section 2. The other rule I would like to apply here, that you know we applied in the standing committee on public accounts to some extent, is that one member not try to dominate. For instance, you or any other member could conceivably go on for an hour or an hour and a half. To avoid that, I would like to generally limit it to about 20 minutes so that we can go around and get general discussion on things. Not that you were going to speak for an hour and a half; I am just trying to make that point because you are familiar with it from public accounts.

Mr. Philip: The new chairman of public accounts has ruled that would not apply unless members started to abuse it. So far, the members of the

public accounts committee have not abused their time and I would not expect members here would abuse it.

Mr. Chairman: I am sure you are 100 per cent right this time, as always, Mr. Philip. Why do you not proceed?

Mr. Philip: OK. I wonder if the Attorney General can help in this. Am I correct in saying that a perceived interest, in his definition, would be a much narrower kind of interest than what Judge Parker has defined as an "apparent interest"? An apparent interest has to be in the view of reasonably well-informed persons, whereas a perceived interest can be simply: "I think you are crook. I do not know where I got that idea, but I have that particular opinion."

Hon. Mr. Scott: That is the way the Chief Justice seems to divide it up. I guess I really do not see the necessity of making a distinction between perceived and apprehended. Both of them connote something that somebody out there is thinking. If I am a citizen on the street, I either apprehend Mr. Philip has a conflict of interest or I perceive that he has a conflict of interest. You can define them differently if you want, but what you are really saying is that one member or one citizen has the idea that another is in a conflict-of-interest position.

Chief Justice Parker divides apprehended from perceived by saying they both have the idea, but in the first case it is a pretty good idea and in the second case it is not such a hot idea. I do not think that advances the question.

Mr. Philip: I think he says one is a more objective idea.

Hon. Mr. Scott: It is the same as saying one of them is better founded than the other, but I think what we want to do here is establish a standard that will permit you to make a complaint. We have done that under section 14, which says that a member has to have reasonable and probable grounds to believe--now those are formal words--before he can make a complaint. The reality is if he does not, I do not know what the commissioner is going to do. He just says, "I have reasonable and probable grounds to believe that Mr. Philip is guilty of conflict of interest because he does the following."

That is the threshold for entry. At that moment, all the member has is either an apprehension or a perception. I do not care what you call it. He has this idea. It may be good; it may be bad. He then launches his inquiry. The purpose of the inquiry, presumably, is not to determine whether he has that idea in his head--we know that--but to determine whether it is right or wrong.

Mr. Philip: Connecting section 14, which you have referred to, and section 2, a member has a perception that I am in a conflict and challenges me. I produce a statement that I had perceived there might be a conflict and, therefore, I have gone to the commissioner or the commissioner has given me a written opinion that "there is no conflict." Under the Quebec bill, it basically says under section 81 that it is not a conflict if I have checked with the commissioner and the commissioner has ruled that it is not a conflict.

Hon. Mr. Scott: In effect, we do not say the same thing but that is the result of our bill.

Mr. Philip: There is some confusion here now whether or not, having

been told that there was no conflict, another member might in fact submit the accused member to all the pains of a judicial review.

Hon. Mr. Scott: He may. That is a risk we have to run. Here is the practical situation. You have--I was going to say you have been in enough--you have seen enough conflict-of-interest situations to know that the facts you begin with are not always exactly the facts you end up with. In this world, we do not always get the whole thing out the first day.

What I am concerned about in drafting this bill is that when a member, to protect himself, goes to the commissioner and says, "I would like your opinion because I am thinking of voting tomorrow," I hope he will be encouraged by the protections that the bill offers to be absolutely candid with the commissioner about what the facts are; that he will not forget to tell him anything that is important and that the commissioner will ask him, "Now is that everything?" before he gives his opinion. But I know enough to know that in life sometimes a member, wanting to get a favourable opinion, will not tell everything. He may later say, "Gee, I thought I had told you that" or "I wish I had told you that. It would have been easier if I had told you that at the beginning."

But the reason you allow the second process to continue, and they do not in Quebec, is because we have to protect ourselves against the eventuality that someone may have got a certificate without going to the trouble of telling the commissioner an important fact.

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Mr. Philip: But the Quebec legislation accounts for that, as I read it. It says, "Provided that the facts alleged in support of his request," namely, his request as to whether he was in conflict, "were presented exactly and completely."

Hon. Mr. Scott: Our bill does exactly the same thing, only the other way around. I do not think there is any practical difference between the Quebec bill and what we are doing here.

Mr. Philip: The way I read it, the Quebec bill has a greater finality--

Hon. Mr. Scott: I do not think so.

Mr. Philip: --inasmuch as a member can, if he presents all the facts, save himself from--

Hon. Mr. Scott: No, but you cannot, you see, because first, under our bill, the member who wants to complain against you, though you have your opinion, as soon as you go around with the complaint to the commissioner, he will probably say: "Look, I gave a ruling on this two months ago. Here it is." You will say, "Oh, well then, forget it." Or you will look at it and say, "Look, Commissioner, that is very interesting and I respect your opinion, but you missed some facts." And the commissioner will say, "All right, if you think I did, make a new complaint and I'll deal with it." It seems to me it works exactly as the Quebec system works.

Mr. Philip: Except that in the Quebec system the person accusing me would have to, if he wishes to get any kind of further consideration, show where the facts that I have defended to the commissioner were not complete, and I do not see how--

Hon. Mr. Scott: He will have to. While it is not said in so many words, it seems to me that it is implicit. The commissioner, as I understand it, is not obliged to conduct a formal inquiry. He may. It says, under subsection 15(2), "Where the request for an opinion is made under subsection 14(1) or (2), the commissioner may elect to exercise the powers of the commission."

Frankly, if the commissioner receives a complaint that is in every material respect identical to the one on which he has given an inquiry, he is going to say: "Look, I've already decided that question in the case of the very member against whom you are alleging the conflict. Here is my opinion. You have not asserted that anything is factually wrong or that there is any difference. I am not going to have an inquiry under section 14(2)."

Mr. Philip: At which point the complainant may well say: "Fine. I'll see you in court."

Hon. Mr. Scott: He cannot say, "I'll see you in court."

Mr. Philip: Not the commissioner, of course, but, "I'll see the case in court."

Hon. Mr. Scott: I guess everybody can say that these days. I do not think that is the way it will work. I think probably, if I were the commissioner, for a moment, confronted by a member with a complaint that is identical to one on which I have given an opinion, I would say to him: "Now are there any facts or any observations, in addition to the ones I had before me before, that you want to talk about, because to me they look exactly the same. You are alleging that as a shareholder, he voted for that. I have dealt with that. Is there anything you want to tell me?"

He says: "Yes, there is. I want an inquiry." I would say: "All right, we'll have an inquiry. But I want you to start off the inquiry by telling me what the difference is. If there is a difference, then we'll carry on. If there is not a difference, I'll make my report."

Mr. Philip: Are you saying that the Quebec bill does not give any additional protection against frivolous harassment of one member by another member than is contained in this bill?

Hon. Mr. Scott: No, and frankly, I do not think frivolous harassment is really going to be our problem in this exercise. As one of those who, I suppose, for the next four years is more likely to be harassed than you on the subject, I do not think that is the nature of the exercise the assembly is engaged in. I recognize the political nature of the assembly and respect it, but I do not think--and maybe you should ask Mr. Sterling--that a complaint, once disposed of, is going to be persistently advanced out of any kind of malicious spirit.

Interjections.

Hon. Mr. Scott: I do not think, in any event, that the Quebec legislation offers a member there any protection that is not offered here, because when the second complainant in Quebec is rejected because he has no new facts, it is going to be exactly the same position as our complainant who is rejected where there are no new facts. They will both go to court. Ed Ziembra in Ottawa or in Quebec City is probably the same kind of guy, only in a different language.

Mr. Eves: I want to clarify a couple of points. I gather it is the Attorney General's understanding or his intent that "his or her private interest" as a member would include the interest of the member's spouse, the interest of the member's minor child. Is that the intent of the minister?

Hon. Mr. Scott: Yes, I think it would include your grandmother, your lover, any person in that kind of capacity.

Mr. Eves: Who will determine where that starts and ends--the commissioner in each individual case?

Hon. Mr. Scott: The commissioner will have the not easy task of deciding whether, in advancing somebody's claim in a pecuniary sense, if that is what we end up talking about, that was advancing a private interest of the member's own or whether it was advancing the public interest.

I think when it comes to getting jobs and making decisions to advance brothers, sisters, mothers, fathers, grandfathers, lovers and persons of that type, he is not going to have much trouble. When it comes to advancing the interests of one's neighbour, I do not think that is a private interest. I think that is something you do as a representative of the constituency, and the fact that he is your neighbour next door rather than your neighbour across the township does not make any difference. I think he would judge those to be not private interests.

That certainly is what we intended to be the kind of judgement he would make. Frankly, someone will say: "Why do you say 'private interest'? Why don't you tell us who you are talking about?" The trouble is that as soon as you list the relations, you have left one out. You have not included aunts or someone else.

Mr. Philip: If any of us are defending ourselves in court, these statements by the Attorney General will be a great help to us when we bring out the Hansards in our defence.

Hon. Mr. Scott: No, it does not work that way.

Mr. Eves: The other point I wanted to talk about briefly with respect to section 2 was that this morning Mr. Smither indicated that he would like to see in the legislation a definition of, for lack of a better one, "apparent conflict of interest," which the Honourable Mr. Justice Parker uses, which would be applicable only when a member was acting in a quasi-judicial capacity. What is the Attorney General's thought on that?

Hon. Mr. Scott: I have really dealt with that, and the problem is that you are not going to be able to define what--I mean, when do you act in a quasi-judicial capacity? You do not know until the court says, "Hey, you were acting in a quasi-judicial capacity."

Let me give you a historic example. There is one on the front page of the paper today. It is asserted in the Minaki Lodge case that the cabinet, in deciding to call the loan on Minaki Lodge, which was overdue, has to meet court standards of fairness in making that decision: a quasi-judicial occasion, court standards, no bias. The fact that someone up there wanted to be king and have a lodge and the fact that it owed a lot of money, those things have nothing to do with it. You have to apply court standards. Now, that is the case. We will not know for several months whether that is a quasi-judicial occasion. That is what the courts decide, in essence. It may be, it may not be.

I envisage, for example, that if you, as a lawyer, wanted to take this case right to the Legislature and to take the most extreme example, you would look at the Atkinson Charitable Foundation enactment in 1945 or whenever it was, when the government of the day--and I do not make a criticism of it--in effect attempted to expropriate what it judged to be a Liberal empire by passing a special act preventing Mr. Atkinson from doing, by will, what he wanted to do to keep that vibrant noisemaker at work. The Legislature intervened, in effect, to expropriate that entitlement by saying he could not do what the law had always said he could do.

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If a court is ever going to say that a legislative act was an occasion of quasi-judicial decision, it seems to me that would be the kind of case where you have a vested interest, economic, because that is what the courts are best at dealing with, and an arbitrary effort to terminate it for an irrelevant purpose. We did not have the charter and we did not have our advanced constitutional views in 1945 and nothing came of it. It worked.

I think I understand the concern he expressed, but to try and deal with a catalogue of those cases where the court is going to impose court rules on decision-makers or legislators is just to lead us into a forest where we are not going to be able to define it. The first question will be, was this decision quasi-judicial? The only person who can tell you that is a court and the cases are not closed. They are expanding the cases every day.

Mr. Eves: I suppose you could say that about anything then. A court may ultimately determine several months down the road what a "private interest" is of any individual member in any particular case.

Hon. Mr. Scott: Actually, I do not think a court will be inclined to pass on that; the commissioner will. We vested that in the commissioner. The problem with vesting the question of quasi-judicial capacity in a commissioner is that he is obliged to predict what a judge would say and he may be dead wrong. You may have lost your seat even though if the matter had gone to court, you would not have.

Let us take the case that was advanced so eloquently this morning by the ratepayers from Ottawa. They are going to court. They are perfectly entitled to argue, if they want to, that the cabinet determination or the legislation committee determination was an occasion that required a quasi-judicial decision on the part of the cabinet. If they get a finding, "Yes, it was," then they are entitled to say, "One of the members was biased because of this background." If they get an answer, "Yes, he was," then that decision is false; it is gone. They have the perfect right to do that and indeed are doing that. I cannot stop them. I would not want to. It is their perfect right. The court has never said that kind of thing yet, but it may. We will just have to wait and see what happens.

Mr. Breaugh: Just to interject, one of the things I do not want to do in this bill, but I think has to be done, is on this point. Although I do not think we can change it in legislation now, I think it is clear that to resolve the perception of a conflict of interest here, the cabinet will have to keep better records that could be made public subsequently. Members of a cabinet will have to find a way to protect themselves to avoid these allegations. I do not really think we can write that into law here, but our considerations and subsequent events are going to make that happen anyway. I think the best we can do is serve notice that this type of question is going

to go to court, that there will be ramifications from it and that you either will be changing it by means of legislation, which I think is going to be very awkward, or by means of practice, which would be a more rational way to proceed.

Hon. Mr. Scott: Take a decision that comes to cabinet. Let us assume that there is a business closing down in a small Ontario town and a bail-out of that business is proposed. Let us assume the member who represents that town happens to be a cabinet minister. We have not had that kind of issue, so I am trying to pick something that obviously does not relate to anything that is real. I think everybody, including the public, would expect and want cabinet officers to discuss that kind of issue at a variety of levels.

First of all, we have the economic interest of the province as a whole to look at. What kind of money are they asking for? What are we going to get from the money? What kind of jobs are we going to get? What kind of demands are we creating for ourselves in other parts of the province? What is the interest of my electors and your electors?

There is a whole range of factors that runs from considerations you might regard as trivial to the broadest kind of provincial, sometimes even national questions. Everybody jumps in and makes his point and they are often biased. I mean there are often people who come to the cabinet table with a preconceived view that bail-outs are great things and we should be doing them at every turn. There are people on the other side who are saying: "Bail-outs should never be done. We are not in here to bail out businesses," and so on.

Looked at from a court point of view, assuming that was a judicial event, they would all be biased. They have views which they are bringing to the debate that have nothing to do with the particular case, that have to do with their preconceptions and their judgements about what is in the interests of the community. Every one of them would not get on a jury because a jury has to come with no knowledge, tabula rasa, without bias.

What is asserted is that there are some cases where cabinet should have that view. It is going to be asserted that there are some cases where the Legislature should have that view. There has only been one such case, very different from this, where it went off on another point as it happens. If there are such cases, it is the courts that will tell us. If we were passing this act five or six years ago, no one would be talking about bias at all because the case had not been decided at that point. If someone said, "Do you expect your members to have views about public issues when they vote on them before they have heard from you?" you would say, "Of course; that is why we elected them."

Mr. Eves' point is just a terribly difficult thing to get into. I understand that we may have to deal with it.

Mr. Polsinelli: I understand things a lot better when we take it away from the theoretical abstract level and bring it down to the practical level. Using your example where the Minister of Industry, Trade and Technology is deciding whether to bail out a tire manufacturing plant which employs 1,300 people in his small town, would that minister still be able to participate if his wife or his spouse were an employee of the company?

Hon. Mr. Scott: I do not know. That is one of those cases we are

going to ask the commissioner about when we get him there. I think that is very dicey. I do not know how many employees there are at this imaginary plant.

Mr. Polsinelli: There are 1,300.

Hon. Mr. Scott: Oh, all right. I think that is a very dicey situation. Frankly, if I were the minister in question, that is one of the things I would ask the commissioner because there is no doubt that my economic interest as an individual is at stake in a major way, bearing in mind what is paid members around here. The exemption for a broad class of electors may not be 1,300 people in one tire plant. I think I would want to ask that question.

Mr. Polsinelli: If the commissioner in that situation determined that it was definitely a conflict of interest--

Hon. Mr. Scott: If I might tell you what my intention was, I think it was my intention that we would not permit that minister to vote.

Mr. Breaugh: Where it would get dicey, for example, is in many parts of northern Ontario with one-industry towns, that kind of thing. It would be hard to find someone from that community who did not very much have a direct pecuniary interest in a decision to keep an industry going, to keep a mine in operation. You could disqualify everybody from holding public office, and I do not think that is the intent.

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Hon. Mr. Scott: I do not think it would. If it was purely a public interest, that is to say, if I lived in a mining town of, say, 1,000 people in the community and I was the Minister of Mines, I do not think that because the event occurred in my riding and would benefit the people of my riding I should be disqualified from voting on it. The case that Mr. Polsinelli gives is where my wife or a member of my private group is going to benefit. I suppose you will say in all probability that is going to happen too. I think when that factor is added in, then you may have to disqualify yourself.

Mr. Polsinelli: Just by way of supplementary, using the same example--with this example, though, my spouse is not an employee of the tire manufacturing plant, but this is the only employer in town and my spouse has a general store where all the employees go shopping.

Hon. Mr. Scott: I think you are entitled to vote.

Mr. Polsinelli: Is there not still the same type of private interest there? In one case, she is losing a direct salary and in the other case, she is losing an indirect salary.

Hon. Mr. Scott: When we begin to look at the implications of decisions, you see very quickly that there is hardly a decision that does not have a public and a private component. Few cases are going to be totally one or the other. That is why we leave it to the commissioner. We can either try to define all those cases, which is impossible, or we can leave it to the commissioner.

The distinction we are selecting for the moment, leaving aside pecuniary, is between private and public. We know where the margins are. We

are going to watch you. If you start getting silly, we may have to modify the legislation. Do not forget it is the Legislature's legislation.

Mr. Polsinelli: I accept that. I accept leaving it to the commissioner. My concern is, what if the commissioner determines that it is a private interest as opposed to a public interest but, in his opinion, it is not the type of private interest that should be covered by the legislation or does not contravene the spirit of the legislation? What does he do in a situation such as that?

Hon. Mr. Scott: First of all, he can report that to the House.

Mr. Polsinelli: Does he still not have to find the member in breach of the legislation, though, if the member acted prior to seeking his advice?

Hon. Mr. Scott: Not if he believes it is not a private interest.

Mr. Polsinelli: No, I am saying if he makes the determination that it is a private interest but it is not the type of private interest that should be covered by the legislation.

Hon. Mr. Scott: That he thinks should be if he got elected and voted on this bill. Is that what you are saying?

Mr. Polsinelli: No, I am saying it is not the type of private interest that contravenes the spirit of the legislation.

Hon. Mr. Scott: It seems to me that is for the policymakers, the Legislature to say. We are trying here to give a series of directions to the commissioner which will be general but reflect our policy view. A commissioner may come to office who thinks that the phrase that affects a member as one of a broad class of electors is too narrow and that if he were a Legislature he would have passed one that affects all the electors in the province. That is a perfectly legitimate view. He may think that but he will have to put that aside. That is not what the Legislature told him to consider.

Mr. Polsinelli: Then how effectively are we doing our job by giving our policy views to the commissioner and really not defining what a private interest is but leaving it up to him?

Hon. Mr. Scott: If you are going to define a private interest--try it. If you can define it in less than 150 pages, we certainly will consider incorporating it in the legislation. The only way to define it really is to say private does not mean public, but it does mean and then some other general words, or it means the following cases, or it does not include the following cases. There are only four or five ways to get at a general concept.

Mr. Polsinelli: How about not defining it, leaving it the way it is, but rather giving the commissioner the discretion to determine that a particular interest which he has determined to be private as opposed to public is not the type of private interest that should find a member in a conflict situation?

Hon. Mr. Scott: That is to give the commissioner the power to override the statute, and I do not believe in doing that. It might be wise but it would be an confession of utter failure.

There is one other point to note--and I think this is a very important

point--that at the end of the day all the commissioner does is make a report to the assembly, with a recommended penalty. The assembly can reject that; it cannot make its own report but it can reject that. I think that is very important. It cannot reject a negative report, but if the commissioner finds a member in conflict and recommends that he be reprimanded or vacate the seat, the assembly can reject that. That is a very important thing.

We hope those differences will not occur too often, but let us remember we are the assembly. I think we have to have that power to say: "Commissioner, we have read your report and we reject it. We think you have imposed a standard on a member that we as members of all parties would not impose on each other."

Mr. Breaugh: Just on the last point you have made, I think this is probably the crucial one: not what kind of wonderful discussions we have about whether there is a conflict or not or whether it is private or public, but what happens. I am interested in what Norm Sterling had to say--and I notice you inadvertently said it a couple of times too--that the commissioner will establish the fine, cause the member to vacate his seat, all of that, none of which is true under this act.

He makes a report. I think somehow we have to deal with this in a way to solve the practical political problem. I am not prepared to leave the temptation there that the commissioner's report, like every other commissioner's report, sits there until the government feels inclined to do something with it. I am not happy with the notion that--I would not take Mr. Sterling's point of view. He is not here so it is a little unfortunate to paraphrase him, but I think he did say that he wants the commissioner to levy the fine. I believe that is not the commissioner's job at all; that is our job.

On the other hand, there is nothing I see here which really, in a direct way, causes the assembly to do anything other than perhaps receive the report. I would be interested in hearing how you intend to proceed from here. I am somewhat concerned that we devise a mechanism whereby the commissioner is totally independent at finding his conclusions and that the Legislature is required, within a set period of time or by a set mechanism, to respond to that with one of the three options.

But it is not an option to ignore the commissioner's report, to simply do nothing about it or to do some mean and nasty thing to boot. I am searching for the mechanism here which says there is an independence in the findings of the commissioner. But the Legislature must respond to that; it cannot leave it there.

Hon. Mr. Scott: I understand the problem and I must say I had never considered it. I suppose we get into the problem about the roles of House leaders in adjusting the business.

Mr. Breaugh: Exactly.

Hon. Mr. Scott: I would be glad for any solution. I begin with the proposition that I do not care how big the majority of the government is. If the commissioner makes a negative report on a minister, for example, and recommends that the seat be vacated, I do not believe that a government can withstand that report and that an effort to use the majority to reject the report without the support of some opposition party would be a major cause

célèbre that would just destroy that party. Parties, happily, are not destroyed for ever. We come back.

But your point is another point really, that you do not want this thing tendered and left on the Clerk's table and there it is. I think the public relations of the exercise is never going to permit that. Perhaps you can devise a way that, by a bill, we can command the House leaders. There may be precedents--maybe legislative counsel knows--in other bills that require a report to be considered within a certain time frame. I have no trouble with that.

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Mr. Breaugh: For example, the mechanisms I would play with would be that a report be tabled and, as all other reports are, automatically referred to the appropriate committee, which must respond within a set period of time.

I would simply remind you that there is more than \$3 million worth of information on my table from the Parker commission. The federal government has not responded, despite the fact that the conclusions of the commission are rather clear. The member in question remains a member with salary, privileges, pensions and all of that, and will continue to be until such time as a resolution is sought. The federal House of Commons itself has taken no action on the matter--it has no requirement to take action on the matter--and appears not inclined to do so until the court proceedings may or may not be concluded. I do not find that a very satisfactory way to proceed.

I would like to see us find some mechanism which says the commissioner reports, and like any other report, it is directed to a committee of the assembly, which must make its reply and decide--the House must finally decide--

Hon. Mr. Scott: Could I ask you and legislative counsel to look at some strategy to devise that? I would like to see it. I have no concern or principle against it, and I understand and respect what motivates it. I just do not want to have our House leader say, "Look, you're trying to dictate the order of business by this statute, and you can't do that." Short of that, there must be some way to require that it be dealt with in a reasonable period of time.

Mr. Breaugh: Do we have the Conservative amendments yet?

Interjection: No.

Mrs. Sullivan: Along with other legislation, including the Legislative Assembly Act, the Election Finances Act and the Criminal Code, this act is really a method of codifying a standard of ethical behaviour for members, which in my view is really being observed as best as possible already. This new act will really only be tested in the breach. When an identification has been made of a failure to comply with the act, it is more likely to be made in a financial area, which will be very clear as a result of the disclosure requirements of the act.

I like the broader definition of conflict of interest in the act, but in terms of aspects which are not financial and which members themselves are going to have to determine--because this is not something that is going to be disclosed in a report to the Legislature; it is something that is going to have to be determined on a day-to-day basis by each member--members are going to have to take into account, particularly if we are talking about family or

other highly personal relationships, whether they would be treating that person in a situation the same way they would be treating anyone else from their constituency. That becomes a very personal test of the member.

For instance, if Mr. Offer's cousin happened to be the absolutely most qualified person that he could imagine to recommend for a position on an agency, board or commission and he could justify the expertise and so on and if he put that name forward, it seems to me there is not a conflict there; indeed, he is doing his duty by putting that name forward.

Hon. Mr. Scott: It may be in that case that Mr. Offer is not in the cabinet; he is not going to make the decision anyway. It also would be that if he were in the cabinet and if his cousin is that highly qualified, he could certainly disqualify himself and step outside. If he comes back in and the person has not been appointed, maybe he was not all that highly qualified to begin with; he just thought he was.

Mrs. Sullivan: But if you are a member and are making recommendations--this may not be the very best example--and in your view that person is the best person you know for that situation, then it seems to me it is reasonable to put that name forward.

Hon. Mr. Scott: Could I stop you, Mrs. Sullivan? I would have thought that in that case the commissioner would look at the fact that the person nominated by Mr. Offer was his second cousin. He would also look at the fact that the second cousin is superbly qualified for that judicial office or whatever. I think he would then hear why Mr. Offer nominated him, from Mr. Offer, and he would hear the critics, and he might conclude that the name was not advanced to advance a private interest; it was advanced because, on consideration, he thought that this was a good candidate. He was not going to make the decision, but he advanced the name.

Mrs. Sullivan: In that situation, the member will have decided in conscience that there is no real conflict there, but someone else may believe that there is an apparent conflict. There would not have been a disclosure requirement before. As far as I can tell, Mr. Offer would not automatically call the commissioner. He may call the commissioner and say, "I would like to put this name forward," but in the course of doing his other legislative work, it may not occur to him to do that, although it may occur to someone else. While his own justification may be right, there could be other situations. I am just saying, I suppose, that each member is going to have to determine how he feels the other sections of the act will work.

One of the things that I thought might be useful is to look at the experience with the Commission on Election Finances, which does not have regulations but which has guidelines that have the force of regulations and enable them to have perhaps speedier application. As a result of the guidelines, first of all, there is an information updating which may be of use to members in coming to terms with and even recognizing their own situations which may lead to an apparent conflict and which certainly do not fall into the disclosed financial matters. That might be something useful to think about, whether to replace the regulations or whether to add something to the act which might supplement the regulations through guidelines.

Hon. Mr. Scott: I think those are important and practical considerations. When the commissioner is in office, if he starts giving opinions to members who come to him, as I think they will, especially in the early stages, he may--and it seems to me he would be entirely sensible to do

so--begin to issue those opinions not with reference to names or in a way that would make it impossible to judge who had asked for the opinion, but in so far as he could by saying: "Look, these are opinions I have given in various cases. I issue them not because they are necessarily right but because they represent the view I have been taking on matters that have been submitted to me." I think that the critical number of cases that most members will confront will be covered off very quickly.

Mr. Chairman: We got two this summer from the election finances commission.

Hon. Mr. Scott: Exactly.

Mr. Chairman: I have Mr. Philip down for some questions.

Mr. Philip: I do not know whether you want me to ask the Attorney General while we are--

Mr. Chairman: Well--

Mr. Philip: I really think we cannot deal with some of the really important substance until the Conservative amendments arrive and we get an idea of where we are going. But I do have some questions--I will not say of less substance--that are minor--

Hon. Mr. Scott: That is an admission we were waiting for.

Mr. Philip: I had some questions of clarification and also some minor things that are none the less important things.

Mr. Chairman: Would you bear with me just a minute? Mr. Cordiano has a short question. If we can deal with that, then we can deal with some of the others, because he has not been on yet. If you will bear with me on that, I would appreciate it.

Mr. Cordiano: I just wanted to ask the Attorney General a very brief question. Regarding section 4--I am looking at the Quebec document and their legislation on use of influence--I am just wondering what the intention was in drafting that. Is there a difference between their section on it and ours? Do you have the Quebec legislation?

Hon. Mr. Scott: What section is it in the National Assembly Act?

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Mr. Cordiano: Section 63.

Hon. Mr. Scott: Do you have it there? Well, first, our prohibition is substantially broader in its effect than the National Assembly bill. You will see that the National Assembly bill says, "...only comes into play when you begin to get a benefit."

In other words, it is the money that triggers the influence section. They are both directed at the same thing, improper influence. But there is no improper influence under the National Assembly, section 33, until there is a payoff.

As is pointed out to me, this is like section 40 of the Legislative

Assembly Act. The other thing is that it is narrower in another important way because it only applies to taking a payoff for your position on a bill, a resolution or any question put or to be put to the assembly or a committee or subcommittee.

Ours is much broader than that in the sense that it extends to everything a member may do by virtue of his office.

Mr. Cordiano: That brings me to the next one. The only difficulty I have with that, and it may not be a difficulty, is that you are a member 24 hours a day. There is no distinguishing between when you are a member and when you are a private citizen.

Hon. Mr. Scott: Yes.

Mr. Cordiano: And you see, that could affect almost everything in your daily life, anything you do, quite frankly. So I am just looking at--

Hon. Mr. Scott: Let me begin by saying that I think the effect of section 4 is we want to encourage members to use their offices, in the broad sense, to influence decisions made by decision-makers, whether they are your fellow assembly members or cabinet ministers. We want you to do that. The only restriction is that it cannot be a decision to further your private interests.

Mr. Cordiano: I know. I understand that. And the private interest is very clear, but I want to--

Hon. Mr. Scott: That is the qualification.

Mr. Cordiano: What I am saying is that, as a private citizen, surely you are entitled to--let us take the example of someone who is in the practice of law and is a private member here. He probably uses whatever bargaining chips he or she has in dealing with the matter that is before him, as an attorney at large. Now, it may benefit him in a private way, influencing the decision of some other individual. Correct?

Hon. Mr. Scott: No. In every case I would begin by saying, "What is the private interest you sought to advance by doing what you did?"

Mr. Cordiano: Say it is an economic interest. I mean, you are influencing the decision of some individual to purchase some land from some client of yours.

Hon. Mr. Scott: Let me put this to you. If you had an assessment appeal before the assessment appeal tribunal and you phoned up the chairman and said, "I want that appeal allowed and I want it allowed now, because I am paying too much tax on this house," I think there is no question that you would be using your office as a member to further your private interests. But if, on the other hand, a constituent came in and said: "I am being jerked around by the Assessment Review Board. I can't get them to grant a hearing. I can't them to dispose of the hearing," and you phone up Mr. Prattas and say, "I want you you to get on to this case right away," what you may have done might be improper in the sense of an improper advance to a senior bureaucrat who has important duties, or if you said the same thing to a judge it would a kind of contempt of court, but you would not be advancing your private interest and it would not be an offence.

Mr. Cordiano: Okay. I was trying to get at the case where you as a

private citizen would be involved in a commercial transaction, let us say, for any household effect, take furniture or whatever you like. And you come from a riding which is self-contained, that is, perhaps in a municipality, and everything you do would be done in that municipality.

Now you go and deal with some individual who happens to know you and he or she has been one of your supporters, and that individual transacts with you in a way that is beneficial to you, but you are not certain of the market value or something like that, as a member. Now you are not going to be able to distinguish that you did not receive a benefit because of the office you hold or as an individual.

Hon. Mr. Scott: I am not sure I understand the example, but you may be in some difficulty. If you go into the municipal council for example, and say, "Look, I am the local member around here and if we do not get this thing rezoned in a certain way, because I want this extension put on my house," and you tried to influence their decision in that way, that may be a problem. You are using your office. You are bringing an advantage to bear to advance your private interest that an ordinary citizen would not have available. That is not to say you could not petition the council or write to council or ask them. If the commissioner judges that you have used your office.

If I went into the council and said, "Look we want this property rezoned and I happen to live in it and I want it rezoned so I can sell it industrial, and by the way, just in case you did not know, I am the Attorney General and I deal with the Minister of Municipal Affairs all the time."

Mr. Cordiano: That is fairly obvious. I am talking about a situation where it may happen to be any household effect that any other citizen--

Interjection.

Mr. Cordiano: Yes, putting an addition on your house, renovations for example. You are going to contract with various general contractors. You could get estimates from a number of them, which is probably going to be the case--

Hon. Mr. Scott: Yes, but how have you used your office in that case?

Mr. Cordiano: The fact that you are a member of the Legislature, someone may allege that you were able to obtain some benefit.

Hon. Mr. Scott: Yes, but you have to use your office. For example, members I presume are contracting all the time for house repairs and a variety of other things and getting into fights with contractors where they say, "I am not going to pay. It is extravagant" and all the rest of it. There is nothing wrong with that. But it is when you begin to use your office, when you say to the contractor, "If you do not collapse, I am going to phone Mr. Kwinter and get you investigated."

Mr. Cordiano: What if you got a very good price on the renovations, but you never exchanged any benefit? It was one way. That is if the contractor gave you---I am not saying I would know that. I am saying someone alleges that.

Hon. Mr. Scott: No, but Mr. Cordiano, in that case, if you got a low price on a contract you would be, it seems to me, in trouble under section 5. You would be accepting a fee, gift, personal benefit. Under section 4, you have to use your office to seek to further your private interest.

Mr. Cordiano: OK. That has to be clear and without question, I am saying under section 4. That is that you had used your office and that some kind of overture was made to that effect or some kind of threat, or some kind of influence. Is that what you are saying under section 4, that you would have had to directly use---

Hon. Mr. Scott: I would not say that a threat was the only way to do it.

Mr. Cordiano: No, but it could be one of the ways you could do it.

Hon. Mr. Scott: It is like obscenity. You are going to know when you do this and when you start marching in there and telling people who you are, because you want to get something done.

Mr. Cordiano: But I used the example of the member who is in a self-contained riding where everyone knows the member.

Hon. Mr. Scott: I remember about the first week I was in office.

Mr. Cordiano: It was a question. It was not a supplementary.

Hon. Mr. Scott: I remember about the first week I was in office we were having a party of campaign workers and we went to a restaurant and bar and there was as lineup and the people who were with me went to the head of the line and said who I was and that I had better get a table and you know, we got a table. No, but you say to yourself, that is using influence. Do not let it happen again. That is using influence. You may not have intended it; you may not have wanted to do that, but you sure as hell were not invited from the back of the line. You used your position to further your interest. Now, I do not think the commissioner is going to--

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Mr. Breaugh: You see, in Oshawa you would get a table right alongside the head. They do not like that.

Hon. Mr. Scott: Well, all the tables I have sat at in Oshawa--

Mr. Breaugh: There are usually a couple of tables flying around the bars there anyway.

Hon. Mr. Scott: But that is a case where you intend to use your office to influence a decision to benefit your private interest. Now, it would be hard to say that getting a table an hour earlier is your private interest; but leaving that matter aside, it emphasizes what using your office means. The sense I have is that members do not have any trouble defining that for themselves. I mean, in pectore we know when we are using our office all right.

Mr. Philip: I find a \$10 bill gets me lots more tables.

Hon. Mr. Scott: You know, when the police car pulls up beside you and you put your briefcase that has "Attorney General" stamped on it in the front seat for the first time in your life--

Interjections.

Hon. Mr. Scott: --and the cop still does not see it.

So I sense that all members will have no trouble identifying those occasions for themselves. The issue will be what kind of judgement the commissioner will make about the facts that have come to his attention, because the member, in an effort to defend himself, is always going to--I should not say always--will frequently advance an innocent explanation of how that utilization of the office occurred.

Mr. Cordiano: I was just trying to get at the case or the situation where each of us in our daily lives will have to do these things and will always have to consider, every day, whether in fact I am deriving some benefit because this individual I am contracting with knows that I hold this particular office, even though there was no exchange of benefits there.

Hon. Mr. Scott: I quarrel with you there because I do not think there are any new rules here. I think sections 2, 3, 4 and 5 are not new rules. Those are the kinds of things that are asked about ministers and members all the time. They are not new rules. We have tried to define them with some generality, but they are the kind of questions that would be asked in order to persuade people out there that you have a conflict of interest now. All we have done, really, is to create a mechanism that will attempt to deal, subject to the assembly's power to reject, with that allegation in order to avoid the committee method, which we used last year, or the royal commission method. The trouble with those methods--it does not have to be pursued again, but I think everybody regards them as unsuitable.

Mr. Cordiano: I think your explanation says to me that you have broadened the scope from the Quebec legislation, that you have broadened it somewhat to include any private interest.

Hon. Mr. Scott: It is broader than section 63 of the National Assembly Act; there is no question about that.

Mr. Philip: I am sure glad I gave Mr. Cordiano that short supplementary. Supplementaries are not meant as a way of jumping the list.

Mr. Chairman: Speeding right along--

Just before we deal with that, though, Mr. Philip, is there any particular time that members have to leave, or do you want to go to five o'clock? What about the Attorney General?

Mr. Philip: I want to go until I finish asking my questions, and then I will be quite pleased to--

Mr. Chairman: The Attorney General will be very short.

Hon. Mr. Scott: Why do you not ask your questions? Then you can go and I will answer them.

Mr. Philip: That will sure cut down on my supplementaries. I will have to ask the supplementaries tomorrow.

The first question I had is this. The Provincial Auditor will no doubt be auditing the commissioner, and we may well end up with some interesting comments in the auditor's report on this somewhere down the line.

But originally, with the concept of the blind trust, Mr. Aird suggested that any dealings that would be of benefit to a minister--and, one can assume, to a minister's spouse or immediate family--would be reported on a regular basis by the Provincial Auditor. Notwithstanding the fact that section 7 is different from the original concept that Mr. Aird was dealing with at that time, do you see a need for any ongoing regular reporting rather than any problems which the auditor might feel compelled to report in his report as a result of the routine audit of the commissioner?

Hon. Mr. Scott: No, I do not see the necessity for that, frankly. In Mr. Aird's initial report he recommended the blind trust. We have not advanced that recommendation, and I think, to his credit, it was done in part before we had such clear evidence of how--

Mr. Philip: They do not work.

Hon. Mr. Scott: --that concept could be abused. As I read his initial report, the auditor's mechanism was one designed to deal with the very blindness of the trust. I do not think we need it here. I think the Audit Act is broad enough to permit the auditor to investigate whatever he wants or to investigate whatever he is told to investigate.

Mr. Philip: I had a question on the appointment of the commissioner. I think some people have talked about the various methods of appointment, but essentially, under the act, notwithstanding all the good sentiments you have expressed about consulting people and consulting all members of the assembly--and I think the example was the appointment of the Speaker, which is done on a routine basis--basically--

Hon. Mr. Scott: Not always.

Mr. Philip: Well, recently, in the last 10 or 12 years, hopefully.

Hon. Mr. Scott: Not recently, but go ahead.

Mr. Philip: In the case of some of the appointments, frankly, the opposition was not consulted. I can think of some good appointments of which the opposition was simply told.

The system that was developed in British Columbia seems to deal with the problem of abuse in the appointment of the Ombudsman. The system there is that the government has the right to short-list a series of candidates, and then it has to be a consensus of the standing committee on the Ombudsman--a consensus, not a majority view. In other words, even on that committee, the majority cannot say, "Of the 10 names that are short-listed from the 150 people who applied, John Smith is going to be the one." They have to go in there and eventually come out with one they all agree on.

Hon. Mr. Scott: How do they break a deadlock?

Mr. Philip: So far there has not been one.

Hon. Mr. Scott: That does not answer my question. It just tells me there has not been one. It also tells me that there probably is not a method to break a deadlock, if there has not been one.

Mr. Philip: It tells me, though, that if British Columbia, which is so much more polarized and so much more politicized in a negative way than the

Ontario Legislature, can in fact develop a system of consensus that works in that body, then it strikes me that we can come up with one that would work, perhaps even more easily, in this body, which I think, in fairness, is less politicized in a negative sense.

Hon. Mr. Scott: Frankly, let me just say that we have enough experimentation in the development of this conflict-of-interest bill, period. As I said yesterday when it was suggested that the responsible government system and the cabinet system be altered because of the bill, those kinds of reforms of the process--the manner in which we choose the Ombudsman, the manner in which we choose the Speaker, the manner in which we choose the freedom of information commissioner and the manner in which we choose the other assembly servants--I think I am going to have to ask you to leave to another day and another bill.

I understand entirely what you say, and it may be, though I have grave doubt, that an experiment that grew in British Columbia might survive here. But it seems to me that the language we have used here is the traditional Ontario language for appointing a servant of the Legislature, and I think it would be anomalous and getting us into a broader exercise if we tried to create an assembly servant under this act who was chosen differently from other assembly servants. It seems to me the Board of Internal Economy or some other agency can respond to your suggestion and, in terms of general procedural reform of the House, decide how it should be appropriately done.

1640

Mr. Philip: Except I suspect that when the Ombudsman Act comes up for review here, you are going to give me the same argument: "Why start with this bill?"

Hon. Mr. Scott: I am.

Mr. Philip: My argument is that you have to start with one of them.

Hon. Mr. Scott: No, I do not think you do have to start with one of them. I would have thought there would be some committee--I do not know what it is called, but perhaps it is the Board of Internal Economy--no? Procedural affairs?

Mr. Breaugh: Maybe I can help. The standing orders have been altered to provide for officers of the assembly and the process whereby they are selected. The process roughly says that the Speaker, the government, whoever, will provide the committee with a short list, the committee will interview and make a recommendation to the assembly and the assembly will then appoint.

Hon. Mr. Scott: That is how it is done, on an address of the assembly?

Mr. Breaugh: Yes.

Hon. Mr. Scott: Then I would envisage that any appointments made under the language of this bill would be subject to the rules that the committee has established for assembly servants.

Mr. Breaugh: Just to take it a bit further, we did not say in our recommendations that it has to be a consensus, but in the first two or three occasions when that process has been used, it has been agreed in committee

that these positions are so important that you cannot split the committee on it. The person, for example, who was offered as an appointment as Clerk of the Legislature, one of the first things the committee said was, "This has to be someone who enjoys the confidence of all parties and all members." So there was a vote taken, but we agreed that we would get it to the point where consensus provides you with your candidate.

Mr. Philip: I guess the direction I was taking is that it seems to me we have started to move in that direction and it might be helpful to simply spell out, using consensus to safeguard at some future--

Hon. Mr. Scott: I have no authority to do that. I think my cabinet colleagues, particularly the House leader, would be very surprised if I began to use this bill to reform the traditional appointment language that we use in statutes. I would really rather defer that to the appropriate committee.

Mr. Philip: I want to ask you about the tenure of the commissioner. I find it interesting, plus I am suspicious that I know what the answer of the Attorney General will be. Under the Ombudsman Act, there is an interesting section that deals with the matter of age, and I notice that it is absent in this bill.

Hon. Mr. Scott: What does the Ombudsman Act say? I do not know what it says.

Mr. Philip: I have the Ombudsman Act here. I can paraphrase it and then find the right section, but it basically says that he is appointed for 10 years, subject to renewal.

Mr. Morin: And can only be dismissed for cause.

Mr. Philip: And can only be dismissed for cause. However, he will in fact retire at age 65, unless that 65 falls within, I think, one year of the end of his normal term.

Hon. Mr. Scott: I suppose the problem in the Ombudsman Act is that when you are making a 10-year appointment, you may really be content to reappoint someone for four years, but if you did not have that section you would have to say, "Look, we either have to reappoint you until you're 73 or we can't reappoint you at all." So that is why there is a provision that would allow a government and an Ombudsman who are agreeable to have a first 10-year appointment, then he is only three years from 65; you want to say to him: "Look, will you do it for the three years? We have a section that cuts you off at 65 anyway" or whatever--it is not 65; is it 75?

Mr. Morin: Sixty-five.

Hon. Mr. Scott: Here, the appointments are for five years, and I frankly do not think that kind of fine-tuning is necessary. I would have thought in the Ombudsman's case, for example, that if you were thinking of renewing an Ombudsman for anything less than five years it would perhaps be really rather silly; you should probably just pick somebody new. But what happens is the 10-year term, and you say: "Gee, we could get seven or eight years out of him, which is a long time. Let us appoint him." Here, where we have a five-year term, I do not think that section is necessary.

If his first term is over at 60, you will be able to reappoint him for a second term. If it is over at 63, you will have to look at appointing somebody else, and you will not get an additional two years out of him.

Mr. Philip: I have found the amendment. It is Bill 13, which was introduced, and the reason I did not find it in the act was that it was an amendment to the act. I have the amendment here.

Hon. Mr. Scott: I do not know the history of that amendment, but I would get the sense that it was probably dictated by a particular desire and a particular case. It has all the earmarks of something special. Was it Mr. Justice Morand?

Mr. Philip: Yes, he raised this.

Hon. Mr. Scott: Yes, it was a desire to accommodate a particular Ombudsman who had a particular problem, and it was not designed as a piece of general apparatus which we need.

Mr. Philip: Under section 10, there is the requirement to "report annually upon the affairs of his or her office to the Speaker of the assembly, who shall cause the report to be laid before the assembly." I think the experience with both the Provincial Auditor and the Ombudsman has been that there is a need from time to time for special reports. I am wondering whether the Attorney General would not consider that perhaps a small amendment should be made that spells out that the commissioner has the right to report whenever he sees fit, in addition to the obligation of making an annual report.

Hon. Mr. Scott: I do not see this kind of annual report as being in the same category as those others. I am tempted, just to get through the day, to say yes, but presumably we deal with legislation more seriously than that and you want to look at it.

The auditor, of course, wants to make a report more often, and should, because his work is not public until reported on. I am sure his case is that a lot of good money could be saved and a lot of procedures tightened up if he could report periodically or quarterly. He says, "It is January; I have discovered something I really want you to know that will save a lot of money," but under our system it is 11 months before we are going to hear about it. That is not going to be what we are dealing with here. The opinions are going to be given to the people who request them. The decisions of the commissioner are going to be laid before the assembly and promptly attended to, according to Mr. Breaugh's amendment.

The Ombudsman, again, is different because the point of the Ombudsman's report is--Mr. Morin knows more about it than I do--that is the way the Ombudsman initiates action, and if he cannot get the minister to do something, he is then powerless, as I understand it, until he makes a report which the standing committee on the Ombudsman can act on, and if, for example, the Ombudsman could only make an annual report, something might come up which the minister refused to accommodate in January, and it is 11 months before a report could be made.

Mr. Philip: Supposing you have a major series of accusations made against a particular cabinet minister by a member and it goes to the commissioner. Would it not be in the interests of that cabinet minister, the public and the commissioner, if he completes the investigation, to make a general report to the assembly or a special report exclusively on that matter, a published report?

Hon. Mr. Scott: He will make his report to the assembly on those allegations as soon as he is ready to do it. That is not his annual report.

His annual report is going to tell how many complaints he has had over the year, how many opinions he has given, how many hearings he has conducted, how many servants he has, what new salary arrangements he wants made for next year, what expanded staff he is going to need, and then he is going to make suggestions about the better administration of the act and do that sort of thing.

He may, quite appropriately it seems to me, make suggestions about improvements in the statute, just as Mr. Aird did, but his annual report is not going to be the place in which he makes the reports that are contemplated by section 15.

Mr. Breaugh: This guy has already reported twice and the act is not even passed yet.

1650

Hon. Mr. Scott: Exactly. If we do not move along, his annual report will be in shortly.

Mr. Philip: The problem arises, what recourse does the taxpayer have if there is a conflict of interest that is discovered after the minister is no longer a member of the assembly, if it arises out of actions that he may have taken while he was a cabinet minister, a member of the assembly?

Hon. Mr. Scott: If there is a fraud, the crown can sue him or if there is a fraud that amounts to a criminal fraud under the Criminal Code, he can be prosecuted.

Mr. Philip: So basically the only action you can have is that if it--

Hon. Mr. Scott: I do not regard that as the only action. That is the action by which you recover the money.

Mr. Philip: You take him to court. There is no penalty, though, under this act that you could impose?

Hon. Mr. Scott: There is built into the act under penalties, section 16, payment of a fine not exceeding \$5,000 in clause (b) and "that the member pay compensation in respect of damage suffered by another person as a result of the member's contravention, in such amount as is specified by the commissioner" in clause (c).

It was contemplated that the member having misconducted himself, he might have done so at the expense of somebody out there. In other words, if you jigger the tender, it would be for the ordinary law to see if the tender could not be cancelled. But the poor person who was cheated on the tender by the minister's intervention might say, "Look, it cost me \$2,000 to prepare that tender and no one told me it was not going anywhere because conflict of interest was going to intervene." The commissioner might have said, "Well, I think the member should pay \$2,000."

Mr. Breaugh made the point in the House about the fine, which I do not repeat. I asked our staff to do some examination about it, and they have come to the view that the imposition of a fine and the imposition of this compensation provision is probably unlawful, in breach of the powers of the assembly.

Because it does not speak to the capacity of an assembly member, the

right to vacate the seat is appropriate. But in addition to that, even if it were within the powers of the assembly, it probably would be in breach of the Charter of Rights and Freedoms because there are not the procedures, the right to be tried by a jury and all these other rights that may procedurally be required before a fine can be imposed.

Mr. Breagh: This is a quickie but a nasty.

Have you thought about the member who is guilty of a breach of this act? We all say he is a bad person and he ought to vacate his seat. Do we then give him severance pay and a pension?

Hon. Mr. Scott: I have no idea about that.

Mr. Breagh: It would be one of the first occasions in the history of mankind when you were found guilty of a crime, forced to vacate your seat in disgrace and we then gave you \$30,000 in severance pay and a pension for life. I think we ought to look at that.

Hon. Mr. Scott: Ross McClellan, if he were here, would advance the proposition that notwithstanding the employment offence which led to the termination, severance pay is earned over the course of the job just like vacation pay and pension and should none the less be paid.

Mr. Breagh: Absolutely. Good source.

Hon. Mr. Scott: You know where he is.

Mr. Philip: You might also argue that the payment was excessive as he did on a different case.

Mr. Chairman: Mr. Philip, I am going to ask you to finish up in five minutes or less.

Mr. Philip: I just have one last question. Is it your understanding then that compensation can be ordered of the member if he is no longer a member?

Hon. Mr. Scott: No. We will be asking the committee and will be proposing an amendment to withdraw clauses (b) and (c). We do not see this exercise on reflection, and we do not think the law permits us to see it which is perhaps more important, as an exercise in which we fine people or make them make compensatory orders. This is an exercise designed essentially to determine fitness to participate in the assembly. If people have lost money on account of what you have done, there may be other places in which that can be dealt with.

Mr. Philip: Thank you. I move adjournment, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Philip. As I understand it, there is general consensus that we could start clause-by-clause tomorrow at 10 o'clock.

Mr. Eves, do you have the amendments for the Conservative caucus?

Mr. Eves: They are on their way right now.

Mr. Chairman: They are on their way. We will get them shortly. If members want to wait to receive those amendments, we will go on the assumption

that you are going to have a chance to read those tonight, having nothing else to do. We can start tomorrow morning at 10 o'clock with section 1 of Bill 1.

Mr. Breaugh: This is not going to go very quickly until we have had a chance to see all the amendments from all the parties. I am in no rush to proceed to process clause by clause until I have some idea of what is on the road map for me. We could start, if you want. I am agreeable to that, but you will not get a nosebleed from the pace.

Mr. Chairman: Mr. Breaugh, if we left you the whole weekend to look at those amendments, you would still have some basic questions to ask on Monday. We could get those questions, which I presume you are going to have, out of the way tomorrow: clarification by members of what those amendments mean and so forth.

Mr. Breaugh: It is conceivable that you are correct for a change. It is not very likely, but it is conceivable.

Hon. Mr. Scott: Then we are not getting into clause-by-clause tomorrow?

Mr. Chairman: I think we will.

Mr. Breaugh: Yes.

Mr. Chairman: It may go slowly at first and speed up a little as we progress.

Hon. Mr. Scott: If I could suggest, Mr. Chairman, I would hope we would not move to clause-by-clause tomorrow. I am trying to respond to this exercise in a conciliatory way and see if we cannot develop a consensus. We cannot begin to develop a consensus until we have the Conservative members' amendments, if they are to be included in the consensus.

Mr. Breaugh: I agree with you.

Hon. Mr. Scott: I think what we need to do is put some options out here for discussion, put the three sets of amendments side by side, and it will be for each of the parties to say what it regards as necessary and for some broker to go around--

Mr. Breaugh: You want to make me a deal again, eh?

Hon. Mr. Scott: Yes.

Mr. Breaugh: You devil. We could probably strike an accord over this. This time it is going to cost you up front.

Hon. Mr. Scott: No, we have a policy on accords. We like the payoff at the end.

Mr. Breaugh: I noticed that, yes.

Hon. Mr. Scott: But as both parties won the election, I suppose there is no problem.

Have they arrived?

Mr. Breaugh: Do we have them?

Mr. Chairman: This is only section 2. I presume the others are coming shortly.

Mr. Cordiano: Are we adjourned or are we waiting for them?

Mr. Chairman: We are still waiting for the other amendments, but I think that the committee is completed.

The committee adjourned at 4:59 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

THURSDAY, JANUARY 14, 1988

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. J. M. Johnson

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Klein, Susan, Legislative Counsel

Madisso, Merike, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, January 14, 1987

The committee met at 10:25 a.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: I call this meeting of the standing committee on the Legislative Assembly to order. I will ask the parliamentary assistant to comment regarding the amendments we have and maybe on some of the things we want to cover today.

Mr. Offer: Basically, I would like to indicate to the members that the Attorney General (Mr. Scott) will not be here this morning. He is in cabinet committee right now. I do not want to leave any perception that he may be back this afternoon because there is no guarantee.

I have spoken with the Attorney General on the matter and it is his desire that today--we are in the committee's hands, obviously--be used to take a look at the amendments so that the members can get an idea as to the government's position on these amendments. We can use today, if not for clause-by-clause, which is up to the committee, at least for a forum for discussion so that next week when we go into the clause-by-clause exercise, all the members will have an idea where each of the other parties stands.

It might provide for what we hope still to achieve, a consensus in this matter. It might not be possible, but certainly we would like to hear what the other parties have to say on particular matters, on why certain amendments have been made, and give them the opportunity of hearing the position of the government on their amendments. We hope that can be carried on today.

On that point, we have staff from the ministry who are available to all the committee members. We think there will be some real use in going through the bill in an overview type of fashion, keeping in mind the amendments which have been made.

Mr. Breaugh: Let me suggest a way to proceed that I think might be useful. I want to say at the beginning that the minister has made clear, and we have tried to put our position forward, on the best way to proceed with this type of legislation. If we cannot support each and every single idea in it, we support the bill in principle and the vast majority of the requirements that would be put on a member or others that might be included in the bill are ones that are supported by all three parties. That is our first major consideration.

What might be useful to do today is to proceed to--I think most of the amendments people want to make are now available. I have one that Cornelia Schuh has worked up for me on a matter we discussed yesterday on how the House deals with a report. I will table those. She has actually prepared three different amendments on it. It is basically three ways to do the same thing, with some slight differences. I will table those with the clerk now and we can make those available to the members.

I think it would be useful to go through the amendments and see where people are indicating they want to pose an amendment. I am going to suggest to you that we stop after that. It would be useful to have some time to consider whether amendments are in order, desirable, whether a slight wording change could accommodate the support of all three parties or whatever.

I know there are some who are anxious to proceed. I am really concerned that if we do that, we will be backing up a great deal. I am aware that we could get ourselves in the position where some things are acceptable to the parliamentary assistant and some things are matters where he would be uncomfortable in accepting an amendment and would want to go and talk to the minister. I yield to his right to do that.

1030

If we take a day today, and perhaps just this morning will be all that is required, and go through these item by item and discuss informally without votes what is the nature of the amendment and kind of get an assessment of where each of the parties sits on those amendments, we will have something we can work with and can probably proceed fairly quickly next week to deal with. The alternative, to put it bluntly, is going to be that if you want to begin clause-by-clause, you are going to have an extensive day-long discussion on section 1 with no vote at the end of the day.

There are two options, as I see them. We will go through in a rather informal way the amendments that are proposed by each of the parties and get not a casual, but not a binding assessment of what is acceptable and what is not, but no formal votes will be taken today. The other option is that we can proceed with clause-by-clause and then we will have a very extensive discussion of section 1.

Those being the two options that seem to me to be available, it seems to me that the preferred option is to proceed with a general discussion of the amendments as proposed, some assessment of what works and what does not work, what is in order and what is not in order, and what is acceptable to all three parties. Then when we come back next week, we will have a pretty good idea of whether we want to put an amendment for the purpose of discussion and getting it on the record or whether putting the amendment means it will actually carry in some form. I say that knowing that some of the amendments I have put will perhaps not be acceptable to the ministry without some wording changes. That is quite acceptable to me as a way to proceed.

Mr. Sterling: I guess with a qualifier, I would agree with Mr. Breaugh. The qualifier is this: I do not want the government's position back in terms of what we put forward at this time. Notwithstanding my respect for the parliamentary assistant, I find that the Attorney General from time to time is unpredictable in the response he might have to a particular suggestion. Therefore it puts me, as the member of an opposition party, in a position of being in a lose-lose situation. Having served in the function of parliamentary assistant to an Attorney General, I think there is a tendency to

defend where maybe the minister might not defend. If the minister comes in next week and the parliamentary assistant has put forward a sterling--

Mr. Eves: Sterling?

Mr. Sterling: --defence of a section of the bill where there might have been some flexibility, the Attorney General might feel an obligation towards his parliamentary assistant that overcomes his sanity in accepting an amendment by our party.

We are quite willing to put forward our position with regard to various amendments, but at this time I am not asking for the government position in terms of where it might find itself.

Mr. Eves: I concur with the comments made by my colleague and also by Mr. Breaugh. I think that perhaps we could go through the bill in a very general way and both opposition parties, at least, could let the government know where they are coming from in general terms and what amendments they would like to see. The government could give its response and maybe have time to reflect upon it before we start next week. If nothing else, it would perhaps help clear the air a little bit. I think a prolonged discussion all day on that matter is not necessary. I think we could probably do that in the hours this morning.

Mr. Chairman: With the concurrence of the committee, we could proceed that way. Do you want to run systematically through the bill, section 1, discussion and amendments, then section 2, discussion and amendments, then section 3, discussion and amendments, etc., and we will just work our way through the bill that way? You can indicate what kind of amendments you have got, what they mean, clarification, etc.

Then when we get finished and when we start on Monday, we can start again on section 1 with the amendments and proceed. You are going to have your clarification, or you can get more clarification at that time, and we can then be a little more precise in what we do on Monday. But today it would be left to general discussion on these things and clarifications brought by the staff. Do not forget, we have the staff here. If you have questions, if you want clarification, that should be sought today so you can give additional thought to that over the weekend. Is that fair ball?

Mr. Eves: The only comment I have on that is that I believe the Attorney General was right when he started on section 2 of the bill yesterday in defining conflict. There are going to be some definitions in section 1 that are going to actually depend upon other things in the bill, especially the definition of "conflict of interest" itself. I have no objection to starting with section 1 today, but you might want to think about starting with section 2 when we get to do the clause-by-clause.

Mr. Chairman: That is a good suggestion, Mr. Eves, and I think we will accept that and start with section 2.

Let us look at the bill, then, and see if you have amendments. Maybe the parliamentary assistant wants to comment on section 2. If he does, or if anyone else wants to comment on it, we can do section 2 first, which deals with conflict of interest, and any amendments you might have regarding it.

Mr. Offer: First, I am cognizant of what Mr. Sterling has said. Without indicating position--and I am aware of what Mr. Sterling said on that

point--I was wondering if Mr. Sterling could clarify in the definition why the regulation under the Public Service Act might not suffice with respect to the inclusion of senior public servants.

Second is the question of why--because that can always be changed about if it is not, in his opinion, strong enough--why public servants ought to be included in an act of this kind, which is dealing with the affairs of members of the assembly, and whether there might be some sort of confusion that arises.

Mr. Sterling: I think Mr. Eves is better able to--but I want to make one comment after he makes his comment.

Mr. Eves: Quite frankly, we appreciate the fact that we may well be ruled out of order with respect to our amendment including senior public servants, but the point of making the amendment was to try to bring to the government's attention that there certainly are far different rules for senior public servants and, quite frankly, for political staff, who in many instances, especially if they are assistants or whatever to cabinet ministers and the Premier, have a hell of a lot more inside information than a back-bench government member or an opposition member in the Legislature has. I do not think there is any dispute about that.

Mr. Chairman: They sometimes make even more than the minister.

Mr. Eves: That is quite true; I have been there.

So the point is really just to bring to the attention of the government what we feel is a deficiency in the regulations under the Public Service Act. Surely if we are going to upgrade the standards of conflict of interest for members of the Legislative Assembly, we should be thinking about doing the same for senior public servants and also for political staff members of the ministers and the Premier. That is our point.

The other point with respect to our amendment in what would be subsection 2(1) under our proposed amendment is tightening up the definition of "private interest." I listened very attentively to what the Attorney General had to say yesterday about his interpretation that "private interest," in his opinion or in the government's opinion, is meant to be very all encompassing and restricted by only three exceptions. I still feel that I do not have perhaps the right or the only answer on this, and I am certainly willing to listen to any other reasonable suggestion by the official opposition, by the government or by the Attorney General.

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But we really feel that somehow the definition of "private interest" has to be tightened up somewhat, and that is really the only purpose of adding in our last few lines there, "or that of his or her own spouse or minor child." If anybody has better wording, we are more than receptive to listening to it.

Mr. Chairman: I just want to say that you are, of course, aware that I recognize that the amendment is not before the committee. If it is, you recognize that I am going to have to rule it out of order.

Mr. Eves: We appreciate that.

Mr. Philip: Mr. Chairman, on that, I can understand why you might--

Mr. Sterling: Could I just add one thing for our party?

Mr. Chairman: OK, speak to that.

Mr. Sterling: I just have one statement, if you will just let me.

A former Liberal member who has had some business dealings with the Ontario government spoke to me about a week ago. He has been out of this Legislature for some period of time now, but I knew him from before. He was telling me that the area which controls what happens around this government, the people who control this government, are not the politicians. Patronage among politicians, contract-giving among politicians, the whole area of benefit that is given to members of the public by politicians is minuscule, if anything. His experience over the two administrations that I have known, both Conservative and Liberal, has been that it continues on as it was and that senior public servants are the people who are really controlling where, in fact, these kinds of conflicts could occur: patronage in terms of employment, patronage in terms of contract-giving, preference given to certain individuals, etc.

That is the impetus behind our amendment here. We think that while the public may believe that we, as politicians, are the people who are involved in this, in fact much more of it, probably 95 per cent of it, is practised in the senior bureaucracies of this government and probably in the senior bureaucracies of the federal government and of every other government in this land.

Therefore, we have no other avenue in terms of trying to correct a situation which we think needs correcting than to propose an amendment like this. At the very least, what we would like from the Attorney General is some positive promise of action on his part. Regulations are not enough, and we want to see some legislation brought forward to control this situation.

I am sorry to interrupt, Mr. Philip.

Mr. Philip: Let me just suggest to Mr. Eves that if the ruling is likely to be that it is out of order, I think that, working with the clerk, there are ways of rewording your amendment that will require it to be ruled in order.

The second point I would like to make is that it seems to me that the political appointments of ministers cannot be dealt with, as the parliamentary assistant has suggested, under the Public Service Act, and therefore, if we do not at least catch political appointments under this bill, you are not going to catch them under another bill.

Now, there may be some room for compromise in there, and I am not suggesting that the Conservative members back off or change their motion. But I think there may be some way of at least getting part of what they want and of being in order while not necessarily getting all of what they want.

Mr. Offer: With respect to the two questions which were raised, one by Mr. Philip and one by Mr. Sterling, one, it is our position that the ministers' staff are covered under the Public Service Act. They are not civil servants, but they do enter into contracts and, as such, there is coverage under that act. To follow that answer, I believe Mr. Eves brought forward what is happening with that particular act itself. There is at this point in time a review being carried on by the Civil Service Commission of the Public Service Act. That is being done right now.

I cannot give you any indication of whether they are looking at the

whole question of conflict of interest, but the fact of the matter is that they are indeed looking at and reviewing that particular act. That is being done at this point in time.

Mr. Breaugh: I appreciate that on the face of it one might think this amendment is out of order. On reflection, I am not so sure that it is. There are a lot of people named in this act who are not members of the assembly. There are a lot of spouses, a lot of employees, a lot of people who would be included in that spousal relationship. Although initially when I looked at it I thought it dealt with somebody who is not clearly within the parameters of the act, I am not so sure that is true.

Let me offer some suggestions that I think might help here. The point that is being made by the amendment is something that should not be lost on us. It is not the intention of this act to allow people to do something wrong because they escape a definition. I think we should be mindful of that. That is not our intent here. Our intent is not to provide people with a loophole to say that they are covered by another act when in fact they may not be.

I would appreciate a couple of things that I think would help us deal with the matter: first of all, a little more detail on precisely why the government does think it is covered by the Public Service Act or some other act. A little background information would assist us in identifying clearly who is and who is not covered by another statute and in what way.

I want to preface my opinion on the matter by simply saying I have read the other act which may include these folks. The restrictions on them are vague, to say the least. The interesting question is who is a civil servant, who is a public servant, who is an employee of the Legislature, who is an employee of the member and into which category any one of these folks falls. This is always an intriguing question. It is not quite as clear as we might want it to be, so I think we need to clean up our act in some way.

Whether a wording change will put the amendment in order or whether something else is required is something that, frankly, I would like to take a look at. I want to put on the record this morning that, in my opinion anyway, we should not be writing this act designing loopholes. There will be enough of those in due course.

Let us begin the process by saying that we recognize that there are people who could have great influence on what happens on the decision-making process who would clearly be covered under the intention of this act, and we may not have identified them. Let us just scrutinize that process a bit more.

You may be able to convince me, for example, that there is absolutely nobody who could do anything untoward here that is not covered by either this act or some other act, but at the moment I have a few questions as to who these people might be.

There are a lot of people around the building, for example, who are not in a technical and legal sense covered under the Public Service Act, and we know that. I hope it is not our intention to say that the spouse of a member could be subject to punishment under this act, but some very friendly person who happens to work in the member's office is not. That is not our intention at all.

I appreciate that there is some difficulty. I have a little difficulty with the amendment as proposed. I am not quite as convinced as I initially was

that this is clearly beyond the ambit of this act, so I think we will have a little argument about that if it is dealt with that succinctly. I think our intention on all sides is clear. We do not intend to design a loophole that somebody has missed here, so let us just look at it a little more carefully.

Perhaps the government can convince us that there is something under way which will make sure that no one gets some undue benefit or that some different wording could be accommodated, because I think the intention is clear all they way around.

We want to make sure that we have identified and covered off people who could profit unduly by this. The fact that they do not happen to be a member, a spouse or covered under the Public Service Act is something that we should be aware of. This is one of those areas where the government could probably assist us in doing that.

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Mr. Sterling: As I understand the parliamentary assistant, the definition in this act would not cover, for instance, a minister's executive assistant.

Mr. Offer: Yes.

Mr. Sterling: The executive assistant is a public servant, according to the parliamentary assistant. Therefore, an executive assistant could do anything that we are prohibited as members or as ministers from doing. Just let me read what a public servant is required to do under a regulation--not an act--under the Public Service Act:

"Whenever a public servant considers that he could be in a position of conflict with interests of the crown arising from any of his outside activities, he shall disclose the situation to his deputy minister, agency head or minister, as the case may be, and shall abide by the advice given." Pretty heavy stuff.

Again, we are getting into the situation where we are pretending that we are going to do away with conflicts of ministers of the crown. That was the whole reason for this thing to raise its ugly head. The ministers of the crown have the largest staffs around them. They have the most hired guns around them.

I guess if one was cynical, one could say, "What the minister will not do, his staff might do." The staff is not controlled in any way. There is no sanction against anybody for what that staff person may or may not do, and the way the conflict is written up, the conflict of interest is that the minister or the member must know of what has gone on.

Mr. Chairman: Mr. Offer would like to respond to that.

Mr. Offer: Just on the last two points, we have to realize the purpose of this bill. It seems that the purpose of the bill is to apply to members of the assembly--

Mr. Sterling: The original purpose was for cabinet ministers.

Mr. Offer:--and to help them and give them some guidance in how they act with respect to their responsibilities as members of the assembly. The comment that I am hearing now is that there are loopholes because certain

persons who are under the Public Service Act do not fall within this act. In fact, they do not fall within this act because this act was designed for us, the members of the assembly.

There might be other acts which should be investigated. There might be other acts which should be strengthened. There might be other acts which the Legislature should review. But this act deals with us and deals with what we have to do, gives us a procedure and, indeed, indicates some of the penalties. They are not loopholes, I think; what they are is a clear indication of who this act applies to. It does not apply to everyone. It only applies to us in how we carry on our responsibilities of office.

I am not going to comment on whether the amendments are out of order. God, I do not know that. What I am saying is that they are not loopholes. It is just a clear indication of the purpose of the act and what it is designed to do, that is, to give us, as members of the Legislature, some guidance and certain rules to follow.

Mr. Eves: I agree with the comments made by the parliamentary assistant to a certain extent. I might add that the real reason for dealing with this whole matter in the first place was conflicts of members of the executive council. A few members of the executive council had a problem, and that is why we are here today.

Then we broadened that concept to include all members of the Legislature. Fine, we thought that was a good idea. This is another concept that perhaps if we are going to deal with the area of conflict of interest in the provincial government, not just members of the Legislative Assembly should be covered.

While it may or may not be that these other people should or not be governed by this particular bill, as my colleague has said, the very least we would like to see out of this is a commitment from the Attorney General that he will introduce a piece of legislation that will cover the rest of the people whom we think should be covered. That is the least we expect to come out of this exercise.

I have had my staff person go down to get the definition section, which we really regarded as the last section of the bill, to bring up our proposed amendments on that, because there are a great number of people whom we define as "senior public servants." They include deputy ministers or individuals in equivalent positions, staff in the Office of the Premier and Cabinet Office occupying positions as special assistants, policy analysts, executive assistants, press secretaries, directors, consultants, policy advisers, executive co-ordinators or individuals in equivalent positions, staff in the ministers' offices occupying positions as special assistants, executive assistants, co-ordinators, special advisers, policy advisers, communications advisers, analysts or individuals in equivalent positions.

Those are taken out of definitions from the civil service and political people who are hired by cabinet and the Premier's office. Those people should be covered. Perhaps they cannot be covered in this particular piece of legislation; perhaps they can.

We would be happy to give those proposed amendments to the clerk, to the committee and to legislative counsel. I take the comments of the member for Etobicoke-Rexdale (Mr. Philip) and the member for Oshawa (Mr. Breagh), for sure; if legislative counsel can propose to the committee a suitable

compromise or indicate which people could or could not be included in the legislation, we are certainly prepared to be guided by that advice.

The point being made is that we feel there are significant numbers of people out there in the senior public service who should be covered; and political employees, as well, who may or may not be senior public servants but should be covered. If we are dealing with conflict of interest in the provincial government, we may as well do it. There is no point in doing half a job.

Mrs. Sullivan: I was going to say much of what Mr. Offer has spoken to already, but I do want to speak directly to some of the issues that have been raised by Mr. Eves and Mr. Sterling related to public servants.

I agree, frankly, having been in a political assistantship position, that perhaps the tightening of those rules, whether through regulations or through legislation, would in fact be welcomed by people who are in those positions.

When I became executive assistant to the Treasurer (Mr. R. F. Nixon) at the change of government two years ago, it was very clear that people who were in those situations were given by the government the same direction that was given to ministers in terms of guidelines.

There were many people in those particular situations, myself included, who resigned directorships that were corporate directorships and who ceased doing other professional work, and so on. But, indeed, the Public Service Act and the regulations did not require that, unless there was a specific conflict related to the work of the ministry.

I do think specific and broader definitions of "conflict" for people in the public service and the civil service would be valuable, but it also seems to me that really is not what we are here about now. That may be a situation for discussion on a later occasion. There is no question that political assistants in ministers' offices and in the Premier's office may well influence or change the course of timing even on particular legislation, which does change the way things operate.

Similarly, very senior civil servants particularly have influences, but people at the director's level and below also change the course of public policy, depending on what they bring forward or what is not brought forward.

Those are matters that, certainly in my previous incarnation, I thought about a great deal and talked to people about. People in the civil service as well, I think, would appreciate stronger guidelines.

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However, I think that in the work of this committee at this particular time, we are really speaking about an obligation relating to members of the Legislature and the executive council in terms of codifying a standard of behaviour which is probably accepted in many ways by each one of us, but that people feel--and probably rightly--should be written down for all to see and understand. I think that is what we should be addressing now.

Mr. Breaguh: I do not think we are that far apart on this but I am going to caution you that if we get silly on this, it is going to get difficult very quickly.

I agree that we started out with a bill which deals with the members' conduct. I want to point to you that if we had a ruling, for example, which said it can only deal with, and amendments are only in order if they deal specifically with, the conduct of members of the assembly, you would cause a problem with section 1 of the act where you talk about "spouse" and attempt to define a spouse. A spouse is not a member of the assembly at all.

You are going to have a problem with section 6, where you talk about former members of the executive council who are no longer members of this Legislative Assembly.

You are going to have a problem and you are going to have to make a ruling on things like section 11, where you are asking people to do things by law who are not members of the assembly.

If one took the broadest sense of who is covered under this act, in the broad traditional sense, a minister of the crown is, in a parliamentary sense, responsible for every single person who does anything in that ministry. That is the traditional view of ministerial responsibility.

I would advocate that is pretty impractical; but on the other hand, I think our intention is clear here. That is why I am not going to raise a huge argument around whether this act, purportedly dealing with the actions of a member of the assembly, has any right whatsoever to cause the spouses of members to file disclosure statements, although I frankly suspected at some point in time somebody who would fall under that definition of a spouse is going to raise the problem before a court: "Because somebody I have a relationship with gets elected to public office, can they make me file a public disclosure form of my private interests?"

I think it is highly unlikely that is going to go untested. People may accept for now that "somebody in my family got elected and so I have to make a public declaration and I may have to put restrictions on my activities;" but I cannot imagine that in the future someone will not challenge that concept.

I just think we need to move with some sensitivity through here. I think the members have posed in their amendment a bit of a problem for us, but I do not think it is insurmountable and I am just urging you not to get too silly on the matter of whether something is in order or not. If it is something that ought to be dealt with by the committee in going through this act, let us try to deal with it, and if we are looking for a consensus, let us try to see where we can find that consensus.

It seems to me that the people who are moving the amendment here are saying they recognize that there may be a problem with this and they are looking for a response. Let us see that they get a reasoned response.

Mr. Chairman: Mr. Offer would like to respond.

Mr. Offer: Just to clarify it, it seems, Mr. Breaugh, your final comments were directed really to whether the amendment is or is not out of order. That is not for us to say. It is for the chairman to rule and for the committee members to determine. I would not have commented on what you are saying except that you did bring in the question of the disclosure statement of the spouse.

The bill is designed around the members. It is not, and it cannot make it, obligatory for the spouse of a member to provide a disclosure statement.

Mr. Breaugh: I do not want to pursue this too far, but I am going to point out to you that you have named in this act people who are not members of the assembly and you are putting legal obligations on them to do things. If you want to get really tight about it and say that it is only in order to deal in this act with matters that concern members of the Legislative Assembly of Ontario, you have got at least three sections of this bill that are out of order because they put a requirement on others who are not members of the assembly to do certain things.

Mr. Chairman: I think the fact is, as you recognise, Mr. Breaugh, and everyone else recognises, that if a spouse chose not to submit the information, then she probably would not be a spouse of a minister. In other words, the person would not be appointed. That is the reality of it I suspect. I cannot state that categorically, but that is reality. If the Premier asks for that information and somebody says, "I am not going to give it to you," then obviously the person may not be promoted to an executive position.

Mr. Sterling: We are not worried about that.

Mr. Chairman: I am just telling you. It is a reality.

Mr. Sterling: There is a big difference. What this act does is it controls the spouse of a member. The member does not know until election day whether he or she is elected or not and therefore you are talking about entering into negotiations with a spouse when you do not have any idea whether you are going to be elected or not some time in the future.

Mr. Offer: Just as a matter--certainly Mr. Breaugh says you perceive certain obligations on people other than members of the assembly. Probably as we go through it clause by clause, maybe even today, we will try to flesh out some of the areas where it is perceived that there is an obligation on a person other than a member, because this bill is designed so that the only obligations are on members of the assembly and on no other persons. We will probably, as we go through a discussion or clause by clause, get into a further analysis of that.

Mr. Eves: I just want to make a brief point on that comment by the parliamentary assistant. The Attorney General told us yesterday that his broad definition of private interests would probably include an aunt, an uncle, a former business associate. If one of those people committed some act, the member or the cabinet minister would be found to have a conflict of interest. So here we have a situation where the Attorney General is saying his definition is so broad that if somebody's 23rd cousin 17 times removed has a conflict, the member is in breach of the act. I mean that reinforces the point that Mr. Breaugh made.

Mr. Offer: The act deals with the actions and the conflict of the member.

Mr. Eves: And others. The member will be guilty of the conflict.

Mr. Offer: But it is the action on the part of the member to further the interests of others but it is the member's action that kicks in the act. We certainly will discuss that in some detail as time progresses.

Mr. Chairman: Is there anything further you want to say about your amendment as it pertains to section 2, Mr. Eves?

Mr. Eves: Mr. Sterling has a comment with respect to subsection 2(2).

Mr. Sterling: Even on subsection 1, it raises the whole issue of the definition of private interest. We basically confined our discussion mostly to whether or not people other than members should be included in the act. We are not satisfied with the existing definition of private interests, particularly since Mr. Aird in his letter to the Speaker on the opinion that I asked, quite definitely wrote that he had no idea what private interest meant and then ruled on what his opinion of private interest was with regard to the specific question that I had asked.

I am still at a loss as to what private interest does or does not mean. I do not think Mr. Aird knows. I think there is going to have to be some kind of attempt, either in section 2 or in section 1 to identify what private interest means. We have tried to basically define in a clearer manner by the last two lines of our proposed subsection 2(1) as to what private interests does mean or to whom it extends.

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I was taken with Mr. Smither's comments and would recommend that a section be put in something like section 3 of the Municipal Conflict of Interest Act, which talks about a pecuniary interest. Then I would like you to extend the scope of interest further than that, but I think that there has to be some kind of direction as to what interests we are specifically after in the larger sense.

Subsection 2(1) of our amendment points to part of the problem in terms of defining conflict, because private interest and conflict sort of go hand-in-hand when you are talking about the guts of the act.

Subsection 2(1) puts in the Parker definition of an apparent conflict. The Attorney General argued yesterday that his definition of conflict, under section 2, included apparent conflict and therefore I can see no objection on his part, to implementing this kind of a suggestion within the act. If, in fact, he says it already includes it, then why not spell it out, as we have done in this particular language or some alternative language, because he did say yesterday that it included apparent conflict within his understanding of the existing section 2 as is put forward. We just want greater clarity with regard to that particular part of it.

That would require further amendment down in the act when you were dealing with other sections, if subsection 2(1) were accepted and I would ask assistance in changing those subsequent sections and dealing with the penalty situation which you might want to be less severe for an apparent conflict versus the first kind of conflict when you were dealing with one of a pecuniary interest, for example.

Mr. Chairman: Mr. Philip?

Mr. Philip: I guess what I am thinking is that I was hearing a broader definition of private interest from the Attorney General than I was from Mr. Aird. If we have that kind of conflict or disagreement at this stage, then I wonder what happens when you have the next Attorney General and the next commissioner. I suggest that what will happen is that the Hansards will long be forgotten, except for debating purposes perhaps, and that the decisions that were made by the commissioner will be what will be used as the benchmark or as the precedent for deciding future cases, by future commissioners. That troubles me a bit.

Unless we have at least at this stage, the Attorney General, hopefully

members of the Legislative Assembly and certainly the commissioner, with relatively the same idea, whether we agree with exactly what is meant or not, then we are just open to another political wrangle in a matter of a few days' or a few months' time.

Mr. Chairman: Mr. Breaugh?

Mr. Breaugh: I just want to reiterate that, from my personal point of view, what we need to do here is kind of a combination of these things. I agree that the problem is that the broader definition of a conflict, which is the position that was put so eloquently by the Attorney General yesterday afternoon, causes the difficulty that it may be so broad that no one sees what the conflict is, or that it can be kind of fuzzified, to use the technical word, to the extent that no one really understands what you mean by a conflict.

So I think we will get to a position where we kind of do almost like layers, or three categories where we might say, "Here is a clear conflict in a pecuniary sense." I believe that Mr. Smither made a good argument for saying that we should do that, in those words, the case law, the precedents and all of that.

So I think some definition of that which is, in most people's minds, really the heart and the most serious part of a conflict-of-interest matter. It has to do with whether somebody makes personal financial gain and the word "pecuniary" seems to have a certain ambience about it that is important.

The second thing I think is in some way reflected by the first part of the Conservative amendment, that this is a somewhat broader conflict. You may not make a whole lot of money, it might not go directly into your pocket, but there is a conflict that is clear; it may have to do with money matters, but it may have to do with something a little more indirect than that. I am not sure that is quite the right wording, but I think that is the intent. So we have kind of two layers then.

Now, if you want to put a third layer on which says that from time to time there may be other things which do not have to do with somebody making money improperly or making a decision that benefits someone indirectly, and that is not proper either--there may be some other kind of conflict that we should mention in passing; in other words, that is your general one--then fine, I have no problem with that.

But somewhere between those three positions we have to find an accommodation that is acceptable because, to go back to what Parker had to say, if this thing is not clear when you first say it, you lead yourself into all kinds of problems later on.

I think our obligation is not to make it simple--that is not the problem at all--but to make it clear where we see the conflicts and what is conflict. I see it basically in those two areas, and I have no objection if you say: "Here's how we'll do that. We'll talk about pecuniary interest, we'll talk about other kinds of conflicts that we can envisage right now and we'll put a third layer on there which covers the general, that there may be things that will be held to be a conflict of interest at some point in time that we haven't really thought about right now but we'll provide for those."

Somehow we have to find the words in there which accommodate that.

Mr. Offer: Just in response to Mr. Breaugh's point with respect to

these different layers of definition of conflict, does he see there being different penalties for the breach of those?

Mr. Breaugh: I think that is kind of implied in what I am saying. I see that as the way it would fall. If the commissioner found, for example, that you had a clear pecuniary interest--in other words, you made \$2 million over some political decision that you took last spring--I am sure that would be the kind of thing where the commissioner would be recommending that person should be taken right out of the Legislature of Ontario.

He may see that you did not make a whole lot of money but that your wife benefited by your political decision. Maybe you were not aware of that, and so a set of circumstances mitigates all of this. He might say, "You've been a bad person, you've been inept and all of that, but we don't think you should be thrown out of here."

He may also find that you were stupid and you were ignorant and you did not do your job very well but you did not have any bad intentions and nothing of any real consequence happened. He might say, "There is a conflict of interest here, but we're not going to hang you on the front lawn today over it."

So yes, out of the classifications of conflict that I see, there will be different and more appropriate fines and punishments attached to the end of that. I think it is fairly normal in law to say that there are degrees of assault, that there are degrees of almost criminality here and they warrant different penalties. Not everybody who goes before a judge gets hanged on the front lawn. Some of them get probation, and some of them go to the Harold Ballard suite down at Joyceville. We do that, and I do not have a problem with that.

Mr. Chairman: OK. If we are finished with that section, as I assume we are, let us move on to section 3. We will come back to section 1 later on. Section 3, on page 4--or, if you are using the French section, on page 5--"Insider information."

Mr. Eves: The only change we propose to section 3 or 4 again is just a tightening up of the definition of private interest. By all means, if the Attorney General comes up with some better wording or can convince all the members of the committee that private interest, as the bill attempts to define it, is all-encompassing, then we would not have any need for those amendments; but we feel the definition of private interest has to be tightened up somewhat, and that is just one attempt to do it.

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Mr. Sterling: Can I ask one question of legislative counsel on this? I am just a little confused. In the definition section, it says, "'member' means a member of the Legislative Assembly or of the executive council, or both." Why was the executive council put in there? Why would you say "a member of the executive council"? Because if you are a member of the executive council, do you not necessarily have to be a member of the Legislature?

Ms. Schuh: I do not believe that it is technically necessary for a member of the executive council to be a member of the assembly. It is very unusual in Ontario to appoint anyone to the executive council who is not a member, but I do not believe that is a requirement in law.

Mr. Sterling: Sections 3 and 4 talk about a member and not about a

member of the executive council. In those cases, if somebody from outside the Legislature was appointed to the cabinet, he would not be included in sections 3 and 4.

Ms. Schuh: He would, because--this is true throughout the bill--when the bill uses "member" without qualification, it means member as in the definition.

Mr. Sterling: OK. If we were later to include parliamentary assistants in a special category, would they also have to be involved in the definition of member?

Ms. Schuh: It depends. The parliamentary assistant, I believe, does have to be a member of the Legislative Assembly. It would depend on the context whether you needed to mention them specifically or not.

Mr. Chairman: OK. Section 4, "Influence." Section 5, "Accepting extra benefits."

Mr. Eves: With respect to section 5, in the amendments we gave to you late yesterday, we are proposing a new subsection 4. We have no objection to section 5 so far as it goes, but it does not really say what happens if a member in fact receives a gift in excess of \$200. It just says that he or she has to report back to the commissioner. Presumably then he or she would be allowed to keep it.

What we are doing here with our proposed amendment is saying that if a member receives and accepts a gift that is worth more than \$200 in value, either he shall immediately return it to the donor or the giver or he shall donate it to the crown in the right of the province of Ontario, and that shall be included in the disclosure statement.

Mr. Breaugh: I have some concerns about this part of the act, and I think we need to explain ourselves a little better.

First of all, I am aware that in other jurisdictions this kind of stuff has caused problems. It sounds rather silly, but it is true that in some jurisdictions where they have attempted to say that if somebody gives you a gift or confers a benefit on you, you must declare it in the first place, and second, in some jurisdictions you cannot keep it; you have to give it back.

The problem always centres on when you try to put a dollar value on that. For example, if my son gave me one of his wonderful paintings, I would say that the painting is worth thousands of dollars. An art critic might say, "It may well be worth that kind of money, but I could not get more than 20 bucks for it." So we would have to go and get an appraiser and do all of that. Is this worth doing? Not in my opinion.

In my opinion, it is only worth doing if you want to kind of put your dollar value on the really high side--\$1,000, \$2,000 or something like that. I have no interest in somebody determining, for example, the kinds of benefits that I get for being a member of the assembly. I have some of the world's greatest coffee mugs. I even have some outstanding beer mugs. I have some wonderful ties, pins and stuff like that.

Mr. Philip: And some of the world's worst homemade wines.

Mr. Breaugh: No, I do not. I dispose of those through the Minister of the Environment (Mr. Bradley).

I am not sure this is worth doing. I want to point out, though, an area where I have seen people in other jurisdictions get into problems. In many American jurisdictions it has become the practice--in the Congress they are now aware of it--that one of the things you can do that would augment a member's salary is to invite him to speak regularly, as most of us do, to a convention or a conference, and to offer him some kind of fee for doing that, which we rarely get, but it certainly could become the practice.

Second, most people in the private sector do not have their conferences in Thunder Bay, as the New Democratic Party does. They choose nicer places: Acapulco or Honolulu. Members of the Congress became accustomed to the idea that one of the things that would be very nice for them to do is to fly off to Honolulu to address this great convention, and to take their wives and their families with them. Since you were flying there anyway and they covered your expenses, you might just as well stay for another week or two weeks, and they offered you the corporate condo for the week. In that jurisdiction, they got into some very real difficulties about people who were elected accepting gifts and benefits.

In most American jurisdictions they stopped this by saying: "You have to disclose this. This is income that you get. It is a benefit. It is a very real one. In other words, it is a paid vacation for you and sometimes for you and your family."

We do not usually get these kinds of invitations, but some of us have. Some of us have been invited to address groups in the United States. Some of us have been invited to address groups here in Canada. It is common practice that some will offer you a mug and some will also offer you a fee for speaking. That is kind of rare but it is not that unusual. For the most part, they will offer to cover your expenses; for example, air fare, hotel, meals and things of that nature.

Somewhere in the middle of all of this, we have to either say, "This is not worth doing at all," or set some guidelines which essentially mean: "We are not interested in small potatoes here, folks. We are interested in something that might be of great personal benefit to a member." I would be interested in pursuing something along those lines.

I have no interest in having someone decide, in setting up a commissioner who will determine that a gift given to me, as a member of the assembly, is worth more than \$200 and that it has to be declared and I have to give it back. I am constantly reminded around this place that they spend more money here going over my phone bill every month, printing up copies of my phone bill every month and mailing it to me every month--somebody checks it, approves it, puts it in public accounts, prints it up and sets it out again--than the phone bill is actually worth. I am not really interested in setting up another of those exercises.

If you want to talk about clearly outlining something that is grossly improper, I will listen to that argument, but I have no interest in setting up an officer who will determine whether a tie or a painting is worth \$210 and whether I have to return it, and the 85 staff people will examine that transaction and the 300 printers will print it up and everybody else will read it. That seems to me to be quite a silly exercise. If you want to do this, get the dollar value high enough so it is clear to all of us that it is improper and will be a rare thing.

Mr. Chairman: Are there any other comments on section 5? If not, section 6, executive council.

Mr. Sterling: We have an amendment on that one which is pretty straightforward. Basically it just includes a parliamentary assistant in the same category as a minister with regard to sanctions against them, because of the possibility of delegation of authority from a minister to a parliamentary assistant. It goes somewhat hand in hand with our arguments when we were making them about executive assistants. A parliamentary assistant is paid by a ministry and is perhaps given access to the kinds of things envisaged in section 6.

Mr. Breaugh: I support the notion--I really do not have a problem with that--basically because different premiers assign different roles to the things known as "parliamentary assistants." I have only been here a little while and I have not yet figured out what a parliamentary assistant is and what one does. Some do a lot work, I am told. Some do a lot of work but none of it is visible. Some are very active. There are some ministries of the crown in this government that were clearly responsibilities given to a parliamentary assistant in other administrations. The Premier seems to have a reasonable amount of latitude in deciding whether this task will be handled by someone who will be considered to be a minister of the crown or whether it will be handled by someone else who will be called a parliamentary assistant.

1130

I have no problem with the Premier having the ability to make those distinctions or to have a big cabinet or a small cabinet. All of that is fine by me but I think it is clear that in the practice here, sometimes a person who is known as a parliamentary assistant does a task which in another administration would be done by someone called a minister, who has the same reasonable powers and the same abilities to get things done. I think that has to be included.

I do not think it is a big deal at all. As I understand it, parliamentary assistants go through the whole disclosure process and all that kind of stuff now, so we are not talking about a major amendment here, but I do think it makes us a little more consistent if we recognize that sometimes a parliamentary assistant does very important things. I will not name names.

Mr. Offer: I just want to clarify the matter. The first point is that staff have noted that and we will certainly take it up with the Attorney General. I want to be clear. From the Conservative amendment, it is directed to the parliamentary assistant who is no longer a parliamentary assistant and makes representations to any ministry.

Mr. Breaugh: I think they mean to include in a general way the term "parliamentary assistant," though.

Mr. Offer: I understand that. That would follow throughout the bill.

Mr. Breaugh: Yes.

Mr. Offer: I am just trying to get a clarification and--

Mr. Breaugh: He is actually nodding his head. You just cannot see it.

Mr. Philip: Does that mean, Mr. Offer, that if this is included, it would be considered a conflict if a parliamentary assistant to a minister sat on the public accounts committee when there was an inquiry into that ministry?

Mr. Offer: I guess that would be a question that would have to be decided. I think there is a good argument that it obviously would not be.

If I can carry on, I do not know, Mr. Sterling, if you have directed your mind to the offence section, I think in section 17, and also including parliamentary assistants or whether you think that would just be more of a logical extension.

Mr. Sterling: I have not seen what our staff has drafted on that, but as you say, some of these things follow along. The penalty sections have to go with the offences.

Mr. Cordiano: Obviously, I have a conflict of interest, being a parliamentary assistant, but I am going to speak on this anyway.

Mr. Sterling: You don't have one until this act is passed.

Mr. Cordiano: That is right.

You are talking about including parliamentary assistants in section 7--throughout, section 7 as well. I am looking at this and saying to myself that there are other people. Obviously, you could make a case that everybody should be included in this. I think that is the case we are trying to make here. In fact, if you take it one step further, you have the government whip, the whips of the other parties and other people as well who can shape things, particularly in a minority government.

We are going to have people who can really decide the course of events, not only on the government side but also on the opposition side. We cannot look at this bill as covering situations just for the next three or four years. We have to look at it as a bill that is going to withstand the test of time. Certainly, amendments will be made to it, but I think we have to look at it in that fashion, that down the road there are going to be other possible scenarios that emerge from an election. You could make the case that other individuals can play a significant role in shaping the way things are done.

Mr. Philip: From personal experience, I can assure you that whips and deputy whips have no influence on members whatsoever on any matters.

Mr. Cordiano: I do not agree with you; I am sorry. You are going to determine how people vote.

Interjection.

Mr. Cordiano: I am not just saying that. The other point I am making is that you have--

Mr. Philip: I was being facetious. May I make my serious remark now?

Mr. Cordiano: As long as it is short.

Mr. Philip: I think there is a distinct difference between a parliamentary assistant and an ordinary member. There have been cases around here--and I used the example the other day of David Rotenberg. When David Rotenberg was the parliamentary assistant to the Minister of Housing and Municipal Affairs, in fact he was the acting or the de facto minister of municipal affairs. He was the guy who dealt with every municipal affairs bill that came in and every delegation from municipalities, not Claude Bennett. I think that you have situations like that where the parliamentary assistant is very directly the person who is acting as minister in a very large portfolio.

If you get a portfolio like Consumer and Commercial Relations, you may

have a parliamentary assistant who has been a stockbroker and therefore understands the securities market and may handle absolutely everything that deals with the financial institutions part of that ministry. Why the Premier does not break it up into two ministries is his business. I do not know--

Interjection: They have broken it up.

Mr. Philip: They have broken it up, but under the old system you would have a parliamentary assistant who might handle that whole area. It is a great deal for the taxpayers because he does not get paid a minister's salary but he is doing as much work as a good many ministers and, in some cases, a lot more. I think there is a difference between that and a whip, for example, who is dealing with everybody in general and nobody in particular.

Mr. Sterling: Just remember that these sections deal with awarding or approving a contract or granting a benefit. I do not have any effect on anybody granting any benefit from any ministry in this government. I have nothing to do with doing that, but a parliamentary assistant may have some--

Mr. Cordiano: Let me look at the other aspect then, the lobbying section, and let us suppose--

Mr. Sterling: This is not influencing. This is granting a benefit or a contract.

Mr. Cordiano: We are talking about section 6. We are talking about--

Mr. Sterling: Read the starts of clauses (a), (b) and (c) and all those clauses.

Mr. Cordiano: You were referring to where--and I assume this would carry forward as well--a former member of the executive--I have not read further on in your amendments; I am just at section 7 here, but you have not included, obviously, parliamentary assistants in section 17. Is that not your intention? Because you would not be consistent if you did not.

Mr. Offer: Just again as a clarification, it is my understanding that the amendment in section 6 is directed to a parliamentary assistant who, after his term as a parliamentary assistant is over, has approached a ministry and there has been some awarding or he has received some benefit. It is not the other way, that the parliamentary assistant has granted a benefit. I am just trying to make certain that is what we are talking about in section 6.

Mr. Breaugh: Just to clarify, I would advocate that parliamentary assistants should be included in all sections virtually as a minister. In terms of either giving out the contract or getting the contract, I make no distinction there.

Mr. Offer: Then with respect to your response, you are advocating that subsection 6(1) be further amended in the first four lines?

Mr. Sterling: That is what I said. I said we had erred in that.

Mr. Offer: Yes.

Mr. Sterling: I do not know whether you consider a PA an employee or not. I think that is why they probably--

Mr. Breaugh: I think the AG said yesterday they did. Is that not right?

Interjection.

Mr. Breaugh: But I just think it should be clarified.

Mr. Chairman: Just a moment. Let me get this clarified. Mr. Sterling, are you going to take this back and redo it?

Mr. Sterling: I think you know what I want to do. I am at the suggestion, is a parliamentary assistant an employee? Do you want it in? The intention is, as far as the person who drafted this particular section is concerned--and I do not know how much legislative counsel had to do with this because a lot of these were happening at the last minute.

1140

Mr. Philip: How can he be an employee when he handles the legislation of the House? An employee cannot introduce or make--

Mr. Cordiano: Can I make a point, Mr. Chairman?

Mr. Chairman: I thought you gave it up a while ago.

Mr. Cordiano: I did not give it up. You interjected and forcefully made me give it up.

Mr. Chairman: Well, with a smile on your face it cannot go too badly.

Mr. Cordiano: I want to make one important point. I want to look at this and I am addressing this to Mr. Sterling and I suppose my friends behind me. Let us take a situation where the government changes hands, God forbid, in the next election--

Mr. Breaugh: See how much they are like you guys.

Mr. Cordiano:--and you will have a former member of the opposition, whose party is now in power and forms the government. What is the difference between that member then going forward and lobbying his former colleagues? He is no longer a member now and he is in a similar position to a former minister, to a former parliamentary assistant. I cannot see any difference.

Mr. Philip: It is covered in the bill.

Mr. Cordiano: Where is it covered?

Mr. Sterling: (Inaudible) for 12 months whether he is in opposition or whether he is on the government side.

Mr. Cordiano: It is covered in the bill. I did not quite follow that, but I may be mistaken. What you are trying to do is include a parliamentary assistant in section 6, right?

Mr. Sterling: It will be the same in section 7 and wherever.

Mr. Cordiano: Right. A parliamentary assistant will not be able to do that for 12 months.

Mr. Sterling: That is right.

Mr. Cordiano: Where is it said that a member cannot do that for 12 months? That is what I am trying to say. Where is it in the bill?

Mr. Chairman: Mr. Cordiano, as I understand it, what some of the members are trying to do here is include parliamentary assistants wherever you include a member of the executive council.

Mr. Cordiano: That is the point I am trying to make.

Mr. Chairman: But there is a difference. They are distinguishing between a member of the Legislature and members of the executive council and parliamentary assistants.

Mr. Cordiano: Exactly my point. Why make that distinction?

Mr. Sterling: Because we think there is a tremendous difference.

Mr. Cordiano: What is the difference when the government changes hands and I am going to lobby?

Mr. Philip: The difference is that you still have the same deputy ministers probably, the same contacts, the same friends, the same people who were saying, "Yes, Mr. Cordiano, no, Mr. Cordiano," when you acted as a parliamentary assistant. Whether the power of the party has changed or not, you still have that relationship and those friendships.

Mr. Cordiano: I am taking it a step further and asking, what about the private members? I mean there is no difference. If your party gets into power, you now have greater influence than you did before. What is the difference? You are going to be able to do the same things that a former cabinet minister would have or a former parliamentary assistant would have. Let us make the rules the same for everybody.

Interjection.

Mr. Cordiano: Mr. Chairman, I want to finish this point.

Mr. Chairman: Okay, make your point. You asked a question.

Mr. Cordiano: I am asking a question. I thought we were having a free discussion.

Mr. Chairman: No, you have to go through the chair. Do you want Mr. Sterling to answer the question?

Mr. Sterling: The difference is, Mr. Chairman, that, one, executive assistants and ministers are paid more than ordinary members for what they do around here. Two, executive assistants and cabinet ministers have access to people and resources that ordinary members do not have. Three, they should be making decisions that ordinary members do not have the opportunity to make in their functions.

This act is really put into two categories, as it is now written: (1) if you are ordinary member you must disclose; and (2) if you are a member of the executive council you cannot do certain other things. What we are saying in our amendments is that because you are a parliamentary assistant and because you are getting paid more for what you are doing and you have access to information which ordinary members do not have and you should be making decisions because you are getting paid more for what you are doing-- and some parliamentary assistants do make decisions on behalf of their ministers--then you should be in the same category as a minister.

Mr. Cordiano: Notwithstanding that, my point is, what is the difference between a member who is a member of the opposition at the present time, who is perhaps even one of its leading critics on the side of the opposition, whose party comes to power and who has a great deal of contact and intimate, close relationships with the people who now form the cabinet? Does that person not have a disproportionate amount of influence?

Mr. Sterling: Yes, and he is controlled by the act.

Mr. Cordiano: What if he decides to resign?

Mr. Sterling: He is controlled by the act for a period of 12 months after he is finished.

Mr. Cordiano: Tell me what is the fundamental difference here. I do not see it.

Mr. Chairman: I think he is trying to tell you, Mr. Cordiano. Whether you agree or accept it or not is another thing, but I think he is trying to tell you.

Mr. Sterling: Let us say, for instance, can I make this--

Mr. Cordiano: We could have a good, honest argument here. I am trying to have a discussion.

Mr. Sterling: I make this specific argument: If you are a minister in the Liberal government and you are defeated in 1991, as you will be, and the Conservatives--

Mr. Breough: That is not what you said on Dateline Ontario. I was there.

Mr. Eves: Things were going so smoothly.

Mr. Sterling: But you are personally re-elected and become a member of the third party.

Interjections.

Mr. Eves: Never say "Never." I can remember some people who said that.

Mr. Sterling: Then this act would still cover you as a member of the third party for a period of time after you were there. What we are saying--

Mr. Cordiano: But I am looking at the other situation, where the opposition becomes the government. It does not cover you.

Mr. Chairman: He has been very patient. Let us hear from Mr. Philip.

Mr. Philip: What Mr. Cordiano is concerned about, if I understand his example, is that he says you are a member of the opposition. You are not covered in the same way as a parliamentary assistant. However, if the government changes and you were an influential member of the opposition, why are you not covered? My answer to that is, if you an influential member of the opposition, then you are going to be a parliamentary assistant or a minister and you are going to be covered.

Mr. Cordiano: No, I am looking at where a person resigns before he even runs for re-election.

Mr. Philip: Then you deal with it under, I guess, our amendments on lobbyists. You can deal with it that way. Then you become a lobbyist. You are not a member of the Legislature.

Mr. Cordiano: I have not seen your amendment. I was referring to the amendment, which I saw, put forward by Mr. Sterling and Mr. Eves. We will wait to see that amendment on lobbyists. I am just saying, if you are making the point that a parliamentary assistant should be covered, then I think you could make the point that in all cases there is room to get around the law.

Mr. Philip: It is also covered under the definition of "private interest" which the Attorney General gave yesterday.

Mr. Cordiano: Yes, but this is a former member of the Legislature now.

Mr. Philip: But it is the private interest of the cabinet minister to take care of his former colleague. If he is doing something improper, it would be the minister who has the problem.

Mr. Cordiano: It does not have to be improper. This person now works as a lobbyist and is going to lobby his former colleagues on his own behalf or someone else's behalf. It is still not covered.

Mrs. Sullivan: I think this is to a similar point, relating to section 17. Whether or not parliamentary assistants are included in this section is something for further discussion, but what concerns me here is if a member of the executive council or a parliamentary assistant--if we decide to include that--is taken out of that position of being in the executive council or a parliamentary assistant but is re-elected at the next election, it seems to me that the subclauses do not cover that situation, unless it is covered in section 2. I would like further clarification.

1150

Mr. Philip: It is covered under section 6.

Mr. Offer: Was your question directed to a minister who is no longer a minister?

Mrs. Sullivan: But is still a member of the House.

Mr. Offer: Yes, section 6 would still apply to that. It need not be during or as a result of an election. It could happen throughout a parliament and it need not only be, of course, directed to one particular political party. There are former ministers of other parties. This section was designed to attach to all of those persons who have made those particular contacts.

Mrs. Sullivan: I suppose I am asking you a question about subsection 17(1) particularly, the offence section. Can that person still be a member under this section? Does accepting a contract--

Mr. Offer: Bear with us for just one moment.

Mrs. Sullivan: There is a fundamental difference in the two

sections. Section 6 says that the executive council cannot award contracts and so on to former members of the executive council--

Mr. Sterling: Or an employee.

Mrs. Sullivan: Or employee of the ministry--right--for a period of time.

Section 17 relates directly to, and puts an obligation on, the former member. I am asking if, under that section, that former member of the executive council can indeed, given the wording in this section, be a member. It is just for clarification.

Mr. Offer: That particular fact situation has been discussed previously. It is the intent that if there is a breach by a former member of the executive council under section 6, the penalty for any person who is still a sitting member of the Legislature would fall under section 16.

Mrs. Sullivan: Subsection 17(1) says, "A former member of the executive council shall not," for 12 months, "(a) accept a contract or (b) make representations on his or her own behalf or (c) on another person's behalf." Can he sit as a member of the Legislature? Is he accepting a contract?

Mr. Sterling: You would think section 17 says you cannot.

Mrs. Sullivan: That is what I am wondering.

Mr. Sterling: Accept a contract that is awarded by the executive council? It does not award you your seat.

The Vice-Chairman: Mr. Breaugh, do you have any comments?

Mr. Offer: I just want clarification on this matter. If you want to carry on, we will come back to your question.

Mr. Sterling: It is certainly the intent of section 17 to eliminate somebody from running in the future and, therefore, if it needs an exception, then I would suggest you put the exception in.

The Vice-Chairman: We will come back to your question.

Mr. Breaugh: I was going to point out that Mr. Cordiano and I generally agree with him on this. He was caught trying to be consistent here. I think the basic problem is that we are trying to accommodate the reality that there is a distinction in salary terms and in a number of other ways right now for people who are in the cabinet or who are parliamentary assistants. But it makes it very difficult to write conflict legislation which says, "This group has a different set of rules from this group."

The hard reality for me personally, for example, is that in the last parliament, as a member of the third party I exercised more political influence than most members ever get to exercise here. I participated in a process that caused the fall of a government and the creation of a new one. There are not too many people who can do that. A relatively small number of members participated in that, even though the decision was subsequently ratified by a larger group of people.

It is very difficult to make those distinctions. For example, in my

experience here, there are lots of people who would make the argument that they were parliamentary assistants but they had absolutely no influence over anybody. I have often heard it said that very often an opposition member has far more influence over a minister than an ordinary government member because the opposition member can get up and wail away at the minister; the minister does not want that kind of public embarrassment, so he listens to us more than he would listen to a government member who comes and says quietly: "I have got a problem. Would you help me?"

It is very difficult to sort this out while trying to maintain these distinctions between members. But you have chosen to do that in the introduction of the legislation, and the best we can do is to try to accommodate it. But it is going to be very difficult now, I think, to continue to keep those distinctions in place. In my view, the theoretically better model is to say: "All members are equal. The conflict rules apply to them all equally. The exclusions of outside employment apply to them all equally." But the reality is that you cannot say to someone who makes \$50,000, "You have the same restrictions on holding an outside job as somebody else over here who makes \$80,000." That is unfair, and we are trying to recognize that and accommodate it in the act.

I think one of the great flaws of this bill, frankly, is going to be the attempt to keep these distinctions in place for reasons which have nothing to do with conflict of interest. They have to do with the hard reality that somebody is in a position of influence and power or someone gets paid more than somebody else. The only real theoretically fair way to write this conflict-of-interest legislation is that it applies equally to every member of the assembly. But we are not able to do that right now, and so we are going to have to live with unfairness and inequities.

I do not see how you can accommodate this perfectly. I see that it would be nonsensical, from my point of view, to say that a parliamentary assistant is not included under all sections of this bill in places where a minister would be; that does not make any sense to me at all. But to be honest about it, we really should be dealing with legislation that deals with all members of the assembly equally and not make distinctions between the cabinet, the parliamentary assistants and the members. As soon as I get the pay bill that says we will do that, I will be there leading the charge.

The Vice-Chairman: Are there any comments on Mr. Breaugh's comments? If you please, Mrs. Sullivan, you will now clarify your question.

Mr. Offer: Just on the question that Mrs. Sullivan has brought up with respect to current members of the Legislature who happen to be former members of the executive council and whether they breach section 17, in fact, members of the Legislature would not fall within section 17.

Interjection: If they are former ministers.

Mr. Offer: That is right. Of course if they are former ministers.

But the penalty section excludes section--and I am just going to refer to that now. Under section 16, it excludes section 17.

Mr. Sterling: We are obviously going to have to go this afternoon, so why not break for lunch now and come back at two? Is that OK with everybody?

Mr. Chairman: It is fine with me.

The committee recessed at 12:01 p.m.

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M-11

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

THURSDAY, JANUARY 14, 1988

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)
VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Faubert, Frank (Scarborough-Ellesmere L)
Johnson, Jack (Wellington PC)
McClelland, Carman (Brampton North L)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)
Sullivan, Barbara (Halton Centre L)
Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. J. M. Johnson
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel
Klein, Susan, Legislative Counsel
Madisso, Merike, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga
North L)

Moffet, John, Legislative Assistant to the Attorney General

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, January 14, 1988

The committee resumed at 2:35 p.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: We will call this meeting of the standing committee on the Legislative Assembly to order. You will remember this morning when we left for lunch, we had essentially finished section 6. If I am correct, we can now start with section 7 and try to deal with those sections.

Does anyone have any comments with regard to section 7?

Mr. Eves: I have just a very brief comment. I do not want to belabour the point but I think Mr. Cordiano and Mr. Sterling had an enlightened discussion about section 6 and including parliamentary assistants. Our amendment to subsection 7(1) is really just the same; it is just the inclusion of parliamentary assistant.

I will give other committee members an opportunity to speak on section 7, if they want to, because we have some other amendments to section 7 that I would not mind making some comments on.

Mr. Chairman: OK. We will finish with section 6 then, and let us go on to section 7. If you have comments on section 7, why do you not go ahead, Mr. Eves?

Mr. Eves: Section 7a is, for lack of a better section number--we would be guided by legislative counsel as to how the sections could be renumbered if such an amendment was to be acceptable, either in this form or in any other form.

What we are doing in our proposed amendment, section 7a, is really requiring divestment by, "A member of the executive council, a parliamentary assistant or such person's spouse or minor child who has a financial interest in" what is commonly known as a public corporation but now defined under the Business Corporations Act as "a widely held corporation, or any financial interest in another enterprise"--it could be a private company, it could be a partnership, it could be a proprietorship, or it could be a co-operative--shall dispose of his or her interests if the corporation or other enterprise "enters into a contract or receives a benefit from the government of Ontario, or a crown agency," board or commission of Ontario.

So what we are saying is that when that enterprise has a contract with the province, in that instance a member, or member of the executive council or parliamentary assistant, or their spouse or minor child, would have to divest themselves of that interest in that enterprise or widely held corporation.

I would hope that Mr. Aird would provide the committee with his comments as to how divestment in this section could be improved upon, because as far as I am concerned, this is not gospel; this is just a suggestion. I think Mr. Aird indicated very clearly to the committee that there were some cases in which he considered absolutely essential, as he put it, that members of the executive council, from time to time, be required to divest themselves of certain interests.

We think that this is one instance, where you own an interest in a private enterprise or you own an interest in a widely held corporation that does business in a very direct and real way with the province and in that instance, you be required to divest yourself of that holding. That really is what this particular amendment is designed to do.

Mr. Breaugh: I have a couple of little problems with this proposal. I would point out to you that what we have proposed is a variation of this theme. I guess it could be described as a bit of a compromise proposal. Our position, and one that I have put forward--and I have tabled the amendments--is essentially to say that this will be done at the discretion of the commissioner, that he has the power to order divesting.

We have a practical problem if we carry this much further. There are those--in my own caucus, for example; and to report it fairly, I think we are divided on the matter--who believe that you absolutely have to get rid of every connection with the government contract that you might have, that no version of a management trust, blind trust, no variation of that theme at all is acceptable. They would deal with it in absolute terms, like this Conservative amendment, actually. I think the ramification of it is that under no conditions could you do business with the government at all.

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The amendment I have put forward is a little different from that. It provides that the commissioner will be the one who makes that decision. As the Attorney General (Mr. Scott) said so wonderfully the other day, you can always sell your business. That is true. That is not what the conflict bill is all about, though. The conflict bill is about how you handle the real and perceived conflict of interest between a member and the government and the member's attachment to a firm in the private sector.

So I think this is something we need to think about for a little while. The reason I opted for the idea of having the commissioner be the person who makes the decision is that it seems that offered you a measure of flexibility. In many small towns in Ontario, for example, I do not think it is seen to be a great conflict of interest that the local member happens to be, to use an example with which I am familiar, the owner of a local car dealership and that he in fact from time to time may bid on tender contracts to provide vehicles for a local road crew or an Ontario Provincial Police cruiser or something like that.

I accept the idea, then, that someone theoretically can still do business with the government; that if you have the only general store for 100 miles, it may not be an evil thing for the Ministry of Transportation crew to

buy a shovel off you; that it may not be really awful if some government vehicle pulls up to your gas pumps and buys \$20 worth of gas. I am not concerned about that, frankly. I am concerned that someone would get a multimillion-dollar contract for his family corporation. That is what bothers me.

Mr. Chairman: With or without a tender?

Mr. Breaugh: With or without a tender, because it could happen both ways. What I am saying is that I want someone who is not directly involved in that to make the judgement call. That is the commissioner, in my view.

You could take the point of view that the individual member may be solely responsible for deciding whether he or she will not divest, but I do not think that does very much for the member; I do not think it does very much for anybody else, either. So I have chosen to put forward the middle ground, which is not quite as extreme as what this motion calls for, which says that the commissioner has the right to order you to divest your interests, and that, taking into consideration all the factors at his or her disposal, he is the one who is in a position to decide whether it is or is not a major problem.

Now, I notice that when they drafted the amendment I have put forward, it was basically worded in a way that looks a little awkward. It is called the "Direction to dispose of benefit received" and it does not quite talk in these terms, so there may be wording changes that you want that accommodate that.

I want to hold one other little discussion on a section--

Mr. Offer: Is it your intent that subsection 5 of your amendment apply to something other than gifts?

Mr. Breaugh: Yes.

Mr. Offer: OK. It was just that point.

Mr. Breaugh: Yes, any kind of benefit. You may want different words than that.

The other little thing which has nagged at me personally for some time, and I see it in this amendment again, is that there is a requirement that you cannot hold office in anything other than a social club, religious organization or political party. I appreciate what you are trying to do here and I have struggled with this a little bit myself in my own constituency. All of us are asked to serve on local boards of the Young Men's Christian Association, the Young Women's Christian Association, the men's hostel, the local unemployed help centre, all of which are boards which in fact get grants from the government of Ontario to do their day-by-day operation.

All of us see our job as being the facilitator who helps them fill out the forms that apply for the grants, reminds people in the ministry that somebody from our riding has got in an application for a grant and does not lose it. I am amazed at the number of times the only thing that is wrong in the processing of a grant application is that somebody has lost the damn envelope with the grant application in it.

I guess on a much smaller scale I see a little bit of a conflict there. I personally have resolved it by saying to local groups: "I would be happy to serve as an honorary director of whatever your organization is, but you know

that I won't be at your meetings and you know that I won't be participating in the decision-making process. I would be happy to show up at your annual meeting and I would be happy to do whatever I can to help you, but I can't serve on a local board of directors."

I do not think that is a bad thing at all, but I want to point out that I would feel really sad if an amendment such as this carried, with good intentions, because I think we want to do that kind of thing. I do not really believe in my heart of hearts that we are all aggrieved a lot by the fact that somebody sits on a women's hostel board of directors. The hostel has applied to one of the ministries for operational grants, so somebody else would pop up and say, "That is contrary to the conflict of interest law and you should be removed from the Legislature."

I am not sure this is worth bothering with, to tell the truth. I understand the purpose of the exercise. I am just aware that the consequences may not be exactly what you anticipate. You can resolve it again by simply saying to these groups--some frankly are insulted when you say it--"I do not want to sit on your board of directors." We try to explain that to them.

I think that for wording such as we see in clause 7(1)(c) here, perhaps we need to think a little bit about exactly what that means.

Mr. Morin: What about the other day with Whipper Watson, with an MPP to get the television?

Mr. Breaugh: Exactly.

Mr. Morin: Was that conflict of interest?

Mr. Breaugh: There is my problem. If Mr. Beer, for example, sat on a local organization raising money by means---

Mr. Morin: And supported by you all.

Mr. Breaugh: Right. By means of raising money, using a telethon to buy a CAT scanner, I think it was. He came here and applied to the members. If we all wanted to, we could all say--Mr. Beer could say, "It is a conflict of interest. I can't sit on your local board to raise money for the hospital." We could all say: "We're sorry. We can't give you permission to use the satellite facilities we have because that would be a conflict of interest and we are conferring a benefit." In our discussions that day, we all generally agreed about the particular benefit that although it did not cost us any money, had they been forced to go outside and rent space on another satellite system, it would have been a substantial amount of money, so it would have been a substantial benefit. I do not think it is our intention to jump into that quagmire.

Mr. Chairman: There is no way you are benefiting personally by it and there is no way Charles Beer is benefiting personally by it. It is a benefit to the community as a whole.

Mr. Morin: But it is still soliciting for funds. It is still using your influence in the government to obtain funds.

Mr. Chairman: Yes, but as the Attorney General said yesterday, that is what you are here for. You are here, not to further your own position, but to further the position of those things you believe in and those people you represent.

Mr. Morin: Just a supplementary on that: What about nonprofit organizations? I think of credit unions, for instance. I sit on the Canadian Automobile Association as a director. I do not get any money out of it. I go there because of my past experience in the field. And so it is with credit unions. I am not being paid. It is a nonprofit organization. But I have a problem if I am a member of the executive council.

Mr. Chairman: That is right.

Mr. Morin: But not as a member. I was told there was no problem. I rank it the same way as I would the organization that came here to raise money. I sit on a hospital board. Is there a conflict?

Mr. Chairman: Not even if you try to get grants for it. Why would you not?

Mr. Cordiano: The whole definition here is between the private interest and the larger interests of (inaudible). I think that with private interest, the definition goes back to that.

Mr. Morin: We identify "social club, religious organization or political party."

Mr. Chairman: Mr. Offer will try to clarify this.

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Mr. Offer: I think the concerns you are discussing are very valid and that is why clause 7(1)(c) of the bill only applies to members of the executive council. It does not apply to members of the Legislature who are not part of the executive council.

Mr. Breaugh: That is true, but I have no interest at all in preventing a member of cabinet from sitting on the local board of governors for the Rotary Club.

Mr. Chairman: Neither do I. I do not see why we are so sensitive about it, to be honest with you. Why can you not sit and be a Rotarian? How are you filling your own pockets by being a Rotarian or being in the Kiwanis?

Interjections.

Mr. Breaugh: I just think we should be careful in wording this kind of thing. I understand the intent of both the government in its section and the Conservatives in their amendment here: they just basically took the government's words and put them in another section. I just think we should be mindful of the ramifications of all this, and it strikes me that we are getting silly.

Mr. Eves: I agree with a lot of the comments Mr. Breaugh made. I am certainly not hung up on the language of either the bill or the amendment, and I do not think it is anybody's intention to catch that sort of circumstance. Our amendment 7a with respect to divestiture is directed at members of the executive council, and we have added parliamentary assistants. Of course, that may or may not carry the day, but it is a suggestion.

I would point out that in Alberta and Quebec, members of the executive council are not permitted to hold shares in a widely held or what we from the

old school know as a public corporation, and they or their families are not permitted to hold shares in a private company that does business or has a contract with the government.

It is interesting to note that the provincial survey we were provided by the research people indicates that also in Ontario, up until this proposed act, a cabinet minister or parliamentary assistant could not do the same thing either.

I find it very disconcerting, to say the least, that we are now going to enshrine this in legislation and weaken the standard that is required of members of the executive council and parliamentary assistants from what it has been for some 15 or more years.

Mr. Cordiano: Under that regime there was no disclosure of financial assets--

Interjection.

Mr. Cordiano: Just a minute, Mr. Chairman. This is a key point. The difference here again is the whole principle of disclosure.

Mr. Eves: Oh, so the principle is that you can disclose that you have a contract and you are being a fat cat in the government. As long as we disclose that--

Mr. Cordiano: No, no. We are talking about holding shares--

Mr. Eves: --and do not vote, we can line our own pockets. That is a great principle.

Mr. Chairman: Just a moment, Mr. Eves.

Mr. Cordiano: That is not going to--

Mr. Chairman: Go ahead, Mr. Cordiano, and then Mr. Eves can respond.

Mr. Cordiano: What I was referring to was holding shares in a widely held or, as you put it, public corporation; you did not have to disclose that before the public under the old guidelines.

Mr. Eves: No. You could not do it.

Mr. Cordiano: You could not do it, period. But you had to put it in a blind trust, and you did not have to disclose anything else as well.

Mr. Eves: That is true.

Mr. Cordiano: That is the difference.

Mr. Eves: That is true. I am not disputing for a moment the fact that disclosure is a good thing--in fact, I think it is a good thing--but in certain instances, especially if you are a member of executive council, it must also be coupled with divestiture as well. I do not care what vehicle you choose to do that by. Mr. Aird in his letter had some concerns--he had some concerns that the only method outlined in the act was a management trust--but he also went on to say that there are some instances--"it is absolutely essential," to quote him--where members of the executive council be required to divest themselves of that interest.

All I am trying to do is give one suggestion as to how that can be done. That may or may not be proper wording. Mr. Aird may have a better suggestion. I am more than willing to listen to his suggestion or anybody else's as to how that should be done. But I think it is a very important principle that should not be lost in this province.

If we are now strengthening the act, and hopefully that is what it is doing, and it is requiring a higher standard, then I do not think we should be moving backward in any area. I think we should be moving forward. That is the only point I am making.

Mr. Breaugh: We have kind of flirted with a number of areas here. I want to get back to what is probably the greater question, and it is precisely what Mr. Eves has just identified. Is it the view of the committee that under no circumstances someone could do business with the government if he had an interest in the private sector, or is it the view of the committee that sometimes, perhaps the commissioner being the person who directs when you can and when you cannot, it is permissible to do that?

To make the argument that disclosure removes the conflict, I think, is a fallacy. Having read several newspaper reports, for example, of the first taping of the disclosure documents, it seemed to me that the people who wrote the news stories did not make any distinction. They said there was a conflict of interest, and here is the evidence of a conflict of interest, that Joan Smith's husband is a major holder in a private corporation which has a major government contract. Now in the writing of the story, they failed to really make much of a distinction.

On the other hand, we are almost purporting to say that all you have to do is disclose that you have a conflict and that is good enough. I am bumping it a step further and saying that sometimes when the conflict is for real, the commissioner may order you to divest all of your interests in that firm or may order that that firm cannot do business with the government, but that you have an outside arbitrator who makes that decision. Frankly, I am uncomfortable with the idea that it would be solely the decision of the member to do that.

Mr. Chairman: Mr. Breaugh, I think the legislation goes one step further, to be fair. It says, for instance, that your spouse or somebody can do business with the government provided it is an open contract, but that you do not participate in a decision that gives that contract.

Using your example, if in fact Mr. Smith got a contract, which he did, Mrs. Smith was not a member of the executive council at that time. But if he were to get another contract, he could get it provided, one, it was advertised and, two, she did not participate in that decision. She would exempt herself from being at the meeting where it was discussed and everything else. She would say she had a potential conflict of interest and so she would not participate in that decision.

Mr. Breaugh: I would argue this way. What seems to me to be reasonable is to say--and I think it is not unfair to use this same example since everyone knows about it. I do not think Joan Smith could ever be the Minister of Government Services and she could record that she walked out of the cabinet room every time a contract was awarded. She could disclose until she is blue in the face, and there is nobody in this province who would believe that the minister responsible for giving out big building contracts for the government of Ontario was not in a conflict-of-interest position.

My proposal is to say two things. One, common sense would mean that

there are some cabinet positions that could not be held by certain individuals because of the nature of their holdings or the holdings of their spouse and, two, if common sense did not work, the commissioner would.

The provisions for saying that you will not participate in the discussion--I am not going to call them questionable but I am going to call them difficult. It is going to be difficult to convince people. Even if you produce records of the cabinet proceedings which say that Joan Smith left the room while this decision was made, on the streets in Oshawa they will say: "What difference does it make whether she was in the room when they took the vote or not? She is a member of that cabinet. She knows those people. She talks to them."

Mr. Polsinelli: Does Sinclair Stevens talk to his wife?

Mr. Breaugh: Exactly. It is wonderful how these things come back to very basic things. Does Sinclair Stevens talk to his wife about whether she borrowed \$1 million that day? You know, Sinclair Stevens in sworn testimony said he did not. On the streets of Oshawa absolutely nobody believed a word he said. If my wife borrowed \$1 million today, I think she would tell me about it. If I spend more than 50 bucks, I have to tell her or I am in big trouble and I know it. We share financial responsibility and information.

It really does not matter what the truth is. The perception is the overwhelming thing here. I think you can use a mechanism which says the minister did not participate in that discussion or that decision and here are the records to prove that, but you better be careful how many times you use that exercise because it will wear thin in a hurry.

The only compromise I could find actually is to simply say, "Some people will not be able to occupy some cabinet portfolios." That is clear. If they do not have the good sense to turn them down or the Premier does not have the good sense not to appoint them, the commissioner can say, "No, you can't, because, by and large, you could be made Minister of Government Services, Mrs. Smith but you will never be able to perform the function because you cannot participate in any of the decisions." I think the commissioner will also from time to time have to step in and say, "This would be an inappropriate thing for a minister to do because of the holdings you have in the private sector."

I am not quite as fervent as some of my colleagues about divesting totally. It is a requirement that if I were in the cabinet I would have no problem meeting whatsoever, but I am aware that there are others who are less fortunate than me and are stuck with various corporate holdings that they have to maintain and I am having mercy on their souls.

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Mr. Chairman: I think to the same extent--then I will go to Mrs. Sullivan--if you were chairman or president of the Canadian Medical Association or Ontario Medical Association, it would be logical to come in here and become Minister of Health, particularly immediately. You may not still be associated with them and so forth, but the fact would be that if you then gave them any particular treatment, people would say you did it because they were your former colleagues and that is why you are doing it.

Mrs. Sullivan: Just speaking to the question of divestiture which has been raised so far, there are a couple of things that have not been mentioned. I would like to raise some specific concerns that I have relating to the requirements on members of the executive council.

One of them is that while it may appear that the government of Ontario has a great deal of influence, say, in overall economic matters, there are very few decisions that are made by the government of Ontario that upset, for instance, the day-to-day operation of a stock exchange. Very few decisions.

Even if there were a major budget change made, the stock exchange would not react positively or negatively unless it was a 100 per cent doubling of corporate taxes or something along that line. It would have to be an absolutely significant decision. On a broad basis, the actions of the province really do not have a lot of effect of a general nature, say, affecting all publicly traded companies.

In Alberta, I understand, there is a rule that members cannot own equity in publicly held and traded companies which can be materially affected by changes, which are general changes, made by the government of Alberta. That is an interesting situation but there, once again, there is no requirement for disclosure. As a consequence, the divestiture is made at the beginning of the term of the member of the executive council and the member is constrained from owning public stock that may be materially affected by government decisions, but may own other stock that is publicly traded.

The fact that there is no disclosure there makes a very large difference because, if a member of the executive council has to disclose, it is very clear where the evident conflict is and that conflict would really only come to the fore if there were action taken in specific relationship to that company or corporate interest.

In the proposed legislation as well, while there is not a requirement for divestiture and the commissioner has indicated that particularly in equity situations--he was interested in exploring the idea of divestiture for members of the executive council. He has really put that forward as an idea for future consideration, not as something that should be acted upon now. As well, he has discussed specifically debt instruments as being adequate and acceptable investments for a holding by members of the executive council.

We really have to look at this a lot more carefully than it has been looked at now. My personal view is that while we may, at some other point, want to look further at questions of divestiture, I would like to see us work with the disclosure provisions alone. There are very important questions that would have to be answered about the necessity of divestiture in terms of decisions that are made by the government.

The other question relating to divestiture that would have to be discussed at some length is spousal involvement in equity ownership. Mr. Breaugh has spoken directly about his views about one member of the executive council and where that member would be constrained in taking other cabinet positions.

The question in that situation that he has not addressed relates to controlling interest, which has not been addressed at all in terms of publicly traded companies. In that situation, the company is a private company and the spouse no longer has controlling interest as I understand it. Walking down the road, at what point is there a conflict if one has one share of Bell Canada? Is there an implied conflict or does the divestiture only have to relate to a broader ownership base?

Those are questions I would like to see explored, perhaps not at this time, but after we have seen this bill up and running for a while.

Mr. Chairman: Thank you, Mrs. Sullivan. I want to clarify something. I understand we are going to start clause-by-clause on Monday at 10 o'clock, just so everyone is clear on that. We should get as far as we can today and then start clause-by-clause with the Attorney General here on Monday morning. I do not know how long you want to go on today, but I want to clarify that we are expected to be back here at 10 o'clock on Monday morning.

We will be sitting on Monday at 10 o'clock and at two o'clock, and on Tuesday not in the morning but in the afternoon at two o'clock. We could start earlier if you want to, but at least at two. Then hopefully we can get this thing wrapped up Wednesday. I know there are going to be inconveniences for everyone. At the same time, it is an important bill and we have to try to get the thing before the House.

Mr. Breaugh: The real estate course starts when?

Mr. Chairman: I do not know. It is important, though. We do not have permission to sit the following week so it has to be finished next week in order to have it before the House on February 8. It has to be next week.

Mr. Morin: If today's discussions are indicative, I doubt very much that it is going to be finished next week.

Mr. Eves: I think everybody has said where he stands on divestiture and maybe the reality will lie somewhere in between. I have never thought of Mr. Breaugh as a compromise individual but in this case he may well be.

We have some other amendments we would propose and we have tabled them with respect to subsections 7(2), 7(3) and 7(4). Perhaps I can run through them very briefly.

In subsection 2, we would ask that the time for requirement be changed from 61 days to 31 days in the case of members of the executive council and parliamentary assistants. In subsection 3, we are adding parliamentary assistants as we have done to other sections of the bill. In subsection 4, we are adding parliamentary assistants.

In clause 7(4)(d) where the trustees are going to report changes to the commissioner, the proposed act now reads "in writing forthwith after the changes have occurred." We have changed that to read "shall report changes to the commissioner within one business day after the changes have occurred." We have expressly omitted the words "in writing" because there may well be some instances, especially in shares of widely held corporations, where it would not be possible to notify in writing within one day.

This may also, by the way, protect cabinet ministers and parliamentary assistants if they disclose a change that they have made within one business day. If you are talking about the stock market, things change dramatically at times from day to day. Those who remember Black Monday do not need a lecture on that. It may well serve to protect the interest of the cabinet minister from time to time.

These are just suggested changes we are throwing out.

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Mr. Breaugh: If I could make a general observation on that, I am unhappy with the notion that this is founded on the requirement to submit

pieces of paper within a certain time frame. I appreciate the point that you are trying to make but I do not think that is the purpose of the exercise.

If it is important, I think we have to say how we envisage all of this happening. I just do not believe that we want to design something where the accusation is that you are a day late in notifying somebody of something. We have already gone through that exercise, and it does not seem to me to be a particularly relevant one. I appreciate the points that are being made there but I am more concerned about other things than whether you filed a piece of paper on the right day and date.

I want to go back to some other sections of the act that require how many times you need to file disclosure documents and whether that is useful, or whether you need to file them once when you are elected or at the beginning of each term and update them every time there is a major change or change of any substance. I am searching for a mechanism that is both practical and reasonable.

Mr. Morin: You normally have three days for a transaction too. Administratively, one day just would not make sense. No one could do it.

Mr. Breaugh: I am not interested in an argument about one day or three days but I am mindful that a reasonable time should be given to people to file things. The relevant argument is not whether you notified somebody within 24 hours. The relevant argument is, did that create a substantial change in your financial situation that caused a conflict to occur? I do not want the Legislature to be seized with matters about whether somebody filed a document on a given day at 11:05. I do not think that is what we are here for.

Mr. Eves: With respect to section 8, the proposed amendment that we are making would add subsections 1a and clause 1b, which are new. They can be numbered or listed any way that the committee decides in the future, if it decides to accept them.

That is just the requirement that the commissioner shall keep a register of withdrawals--that is Mr. Sterling's concept--and that the member who withdraws from a meeting in accordance with the clause shall file a notice of withdrawal in the public register, disclosing the general nature of the conflict of interest or apparent conflict.

Mr. Breaugh: I am in agreement with that concept, whatever practical mechanism the government can devise that will keep a reasonably accurate record of when conflicts are declared, how they are dealt with or when people decline to vote. I think something of that nature has to be done.

Mr. Eves: The two amendments that we would propose are in line with the comments and the questioning I had with Mr. Aird when he was in committee. His statement was that, ideally, he cannot perceive of a commissioner accepting the job unless he or she was approved by 100 per cent of the members of the Legislature. We have used the term "75 per cent."

I think a substantial majority of the members of the Legislature should approve of such an individual, and we have put that in, proposing a change to subsections 9(2) and 9(4) with respect to his or her removal from office, as well. That is just a figure. We are totally open to suggestions there, the point being, though, that I think a substantial majority of the members of the Legislature should approve of such an individual and should disapprove of such an individual.

Mr. Chairman: The only concern I would have there, Mr. Eves, is that there are different officers who can be removed from the Legislature and I do not recall any one situation where percentages are mentioned. I would think if there is a vote and that vote is 51 per cent, the person is removed. Even if you had a vote and it lost, I would think that person would find it very difficult to continue even if it were 55 to 45 and he stayed there. I do not see how anyone in his right mind would want to continue on in an office where 45 per cent of the members of the Legislature could not support you. So to that extent, I do not know whether it is necessary. You want the percentage in--

Mr. Eves: That is quite true. Maybe there is some other wording that the Attorney General can come up with that will solve the problem and we will not have to put a specific figure on it.

Mr. Chairman: Another way of approaching that, of course, is to say all three parties, some representation of the various parties.

Mr. Eves: That is true.

Mr. Chairman: As you know, in order for a party to be recognized as a party, you have to have at least 12 members.

Mr. Faubert: Just on that point of information, Mr. Chairman, I take it that in any vote of the House, as long as five members do not request a division on it, it is then assumed that there is a concurrence among all parties for that. Is that not the way? What happens on a division, just on a procedural--

Clerk of the Committee: There is concurrence in the House only if there is no dissenting voice.

Mr. Faubert: That is what I say: There is an automatic concurrence on that basis, which means that all parties agree. Is that not it?

Mr. Chairman: If there is no dissenting voice.

Mr. Faubert: But then after it is declared by the Speaker, can five not call for a division?

Interjection.

Mr. Faubert: OK, so why do you need any percentage in here at all? If you have a division, you are in trouble on this.

Mr. Chairman: Mr. Eves would like to speak to that, because he has got the amendment.

Mr. Breagh: I am uncomfortable with this notion of 75 per cent just because it is rather strange in a parliamentary system to see something like that. To tell you the truth, I would go a touch further. I believe that in this position there is a requirement that the person who occupies it be acceptable to everyone.

Now, I do not want to get carried away here and say that every single member or that one member could stand and block, but I do feel it is important that at least a consensus of the three political parties and their representatives must arrive at the same conclusion with this. I am not saying

that one member could stand up and say nay and the person does not have a job, but perhaps the clerk could kind of work on a little bit of wording that is a little more parliamentary than 75 per cent.

Mr. Faubert: But just on a point, that is what I am getting at.

Mr. Breaugh: Yes.

Mr. Faubert: Probably within the parliamentary system there is no provision for a 75 per cent vote on anything.

Mr. Breaugh: No, there are provisions for things like that.

Mr. Faubert: It is probably two thirds or something like that that would really--

Mr. Breaugh: Mostly expressed when one says, "Does the vote carry?"

Mr. Faubert: Carry. OK.

Mr. Breaugh: If more than half the members stand up, there is a percentage that carries the vote.

Mrs. Sullivan: It just seems to me that this is very unusual when you compare the situations relating to the appointment of the Ombudsman, the head of the Electoral Boundaries Commission, the Commission on Election Finances chairman. The wording relating to the appointment of those people is very similar to the wording that is put forward in this act. They are the Lieutenant Governor in Council appointments on the address of the assembly, and I think in practice we understand that in positions where there is an appointment on the address of the assembly, there is all-party agreement that is negotiated with the House leaders. It would be folly for any appointment of this nature to go forward without having that negotiation and agreement in advance. I think we would look foolish in putting forward--

Mr. Breaugh: Could I make a little proposition to you, then? It is a little unusual, but I think it is procedurally correct. How about a little recommendation from the committee that, in addition to the bill when it is reported, a little one-line recommendation goes in from this committee that the standing orders be altered to add this commissioner to the list of those who are appointed by the committee technique that we have used whereby a short list is prepared and sent to a committee of the assembly, and they prepare a choice. That is basically how we do the Clerk of the House, the Ombudsman and others who are officers of the assembly.

I am really saying, do not make it an amendment to the bill. Put a little notation in when the committee reports that suggests this would be one of the positions which would be handled in that way. It seems to me that gives us all a relatively clear understanding of what we want to do. It gets us out of the percentage numbers routine, but it does note that it is important enough that we do it in that way. I would think that is what would happen, anyway.

1520

Mr. Chairman: What you are saying is that it not be too dissimilar from the way the Clerk was chosen.

Mr. Breaugh: Exactly.

Mr. Chairman: So that general terminology then.

Mr. Eves: We have numerous amendments to section 11, a lot of which are really just precipitated by making one or two suggestions or changes and then the subsections have to be renumbered or reworded. Basically, what we are doing here, as succinctly as I can put it, is that we are talking about disclosure statements for members to be filed within 60 days of their election and disclosure statements for members of the executive council to be filed within 30 days of their appointment.

There is a big difference between somebody who is elected or appointed. Usually, members of the executive council are already members of the Legislature and, supposedly, will have already filed a statement of disclosure as a member. Quite often, there are cabinet changes and parliamentary assistant changes made part-way through a term. I can think of all kinds of examples, including my own, where that is the case. In fact, it is the norm. Usually, members of the executive council are not named on the day they are elected. It is usually some two, three or four weeks later that this takes place.

Also, we have added a subsection in here which, on the advice of legislative counsel, may be in order or out of order. It is a point I raised with Mr. Aird when he was here, that members of the assembly and their spouses and minor children be entitled to receive independent legal advice with respect to their disclosure statements and their filings, and that would be at the expense of the Legislative Assembly fund. There would have to be, no doubt, some tightening up or regulation putting a limit on that. I fully realize that requires an expenditure of money and, for that reason, may or may not be in order. However, it is something I would appreciate the government or the Attorney General looking at and perhaps talking to Mr. Aird about and maybe making a suggestion about.

Mr. Chairman: Mr. Eves, you recognize that when you are speaking about a deadline of 30 days, in fact, members cannot take the oath of office until--what is it?--about three weeks sometimes, until it has actually been gazetted that they have been elected.

Mr. Eves: Well, whatever wording you want to use. It could be from being sworn into office or whatever the technical definition is of when one assumes office. That is what I am really trying to get at. I am not trying to say within 30 days of election day.

The other changes we are purporting to make to section 11 are proposed subsections 6, 7, 8 and 9. That wording really is including spouse and minor children. There we go right back again to the definition of what a private interest is or is not. That may be facilitated by whatever accommodation is made or not made by the government or the Attorney General outlining a statement of gifts or benefits that have been disclosed to the commissioner.

Our proposed subsection 7 requires a significantly greater, I would say, amount of detail with respect to holdings. Our proposed subsection 8 is really just a reiteration of what the legislation already outlines.

Subsection 10 is a substantial or different change. It states: "The Premier shall approve the disclosure statements of members of the executive council or parliamentary assistants before they are filed."

The reason we make that distinction is that elected members are not

appointed by the Premier of the province, but there is no doubt that members of the executive council and parliamentary assistants are. In that respect, surely the Premier has some responsibility or obligation to ensure that they fulfil the requirements. The Premier does not appoint me; he does appoint Ian Scott and others.

Mr. Sterling: Herb Epp as well.

Mr. Eves: Herb Epp as well.

Really, those are the amendments that we have proposed with respect to section 11. A lot of renumbering is required because of the changes we are proposing. Again, they are ideas. They are not cast in stone by any stretch of the imagination. I just think they are ideas that would be useful for the committee to consider and to discuss.

Mr. Chairman: The parliamentary assistant has a question, then Mrs. Sullivan and then Mr. Breaugh.

Mr. Offer: Just a matter for clarification. On your amendments to subsections 11(3) and (4), what is the reason for giving a different disclosure time period for members as opposed to cabinet ministers?

Mr. Eves: Do you want to answer that? You answer that and I will go do my radio tape.

Mr. Sterling: Were you going to ask the difference between an ordinary member and cabinet ministers?

Mr. Offer: No. Why there would be a difference in the time period for disclosure of the interests, of a member as opposed to a cabinet minister. I am just trying to find out the reason--

Mr. Sterling: When compared between whom?

Mr. Offer: Subsection 11(3) says that the "Members of the Legislative Assembly shall file disclosure statements within 60 days...."

Mr. Sterling: Yes.

Mr. Offer: And in section 11(4) it says, "Members of the executive council...within 30 days."

Mr. Sterling: Yes.

Mr. Offer: "Of being appointed."

Mr. Sterling: Because when you are elected you are not--first, you are in an election situation. Usually when you have been appointed, you are already elected, set in office, and the cabinet is normally sworn in two or three weeks after you are elected. So you are in a position of responding to an appointment. There is usually a period of consultation, whether you consider you are going to be a cabinet minister. In my case, it took about two minutes. In some other cases, it takes a longer period of time.

There is a significant difference because when you are a member and you are being elected to the Legislative Assembly, you are not certain you are going to be elected. You have a period of time before you are sworn in, as the

chairman pointed out a few minutes ago, where it takes two or three weeks before you are actually sworn in to the Legislature. Therefore that period of time goes fast. In a lot of cases the cabinet is chosen after a period of time when you are around this place, and we just do not think that it is necessary to have 60 days to respond. I think the circumstances are significantly different after an election than they are when you are appointed to the cabinet.

Mrs. Sullivan: Just on that point, if a minister were selected from within caucus, that person would already be a member of the Legislature and therefore would be subject to the disclosure or filing requirements of the ordinary member. The only application in this amendment would be if an executive council member were selected from outside of the elected membership in the House. Is that what you are--

Mr. Chairman: Or immediately after an election.

Mrs. Sullivan: Yes, but immediately after an election, if he is a new member, for instance, the same time constraints in fact would apply to the new member, whether that person was going into cabinet.

Mr. Sterling: I guess if you were an ordinary member, the distinction would be if you--let us say you were elected on September 10, 1987 and you were an ordinary member. If this law had have been in place, you would have had 60 days in which to respond and file. If you were asked by the Premier (Mr. Peterson) to be a member of cabinet, let us say two weeks after--when did they swear in the cabinet? What day was that?

Mr. Chairman: September 29.

Mr. Sterling: September 29. If you were asked to do that, you would have had approximately 45 days from when you were elected. I guess the reason is that the whole act is put there for purposes of the public. In establishing any time frames, what you are trying to do is establish what is reasonable for a person to be able to comply.

A minister is usually given advice by the Attorney General. He has people he can ask quickly about what he has to put in his disclosure statement, etc. A private member does not have those luxuries. He has to find out on his own, has to go out and get that kind of advice on his own and has to respond in a different fashion. That is why we just thought that it was not only in the interests of the public, but in the interests of the Premier, as well, in having his ministers respond quickly. Because if there is a problem, then we should know very quickly about a minister, much more so than a member.

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Mrs. Sullivan: If I am still on the list.

Mr. Sterling: I do not think that this is one we are going to live and die by in terms of the whole bill but that is basically the philosophy behind which we are coming.

Mrs. Sullivan: I wanted to speak to the recommendation for the amendment on subsection 11(5).

Mr. Morin: Can I have a supplementary? The idea of 60 days is to permit the individual to hire the services of an accountant and a lawyer, to

put everything together. If you have assets, I do not know, like Mr. Breaugh has all around the world, it is a little more difficult to gather. This is why you have 60 days. So it does not matter, having the 30 days for a minister and 60 days for a member, I do not think is relevant at all. It should be 60 days to give them ample time to get organized.

Mr. McClelland: Or 30 days for everybody.

Mr. Morin: Or 30, but 60 makes more sense.

Mr. Chairman: OK, are there any other supplementaries to that?

Mrs. Sullivan: On subsection 11(5): I think this would be out of order in that it would relate to matters that are included in the Legislative Assembly Act and responsibilities to the Board of Internal Economy, and you may want to talk about.

Mr. Sterling: It depends on how you interpret it. We seem to have a Clerk of the House who wants to take the position that any time you infringe on any area that spends even a nickel, then that particular motion is going to be out of order. If you want to go by those rules, as have not been practised in the past, then this particular motion is probably out of order.

Notwithstanding that, I think our party is going to continue to put forward motions like this, otherwise, you cannot debate most issues in this parliament.

Whether this is a part of the Legislative Assembly Act or not I do not know, with respect, what relevance that has to this particular act. I think there is a significant problem with a conflict between the act that is proposed and the existing Legislative Assembly Act, and I stated that earlier in these particular hearings.

I think if you are going to afford ministers the luxury of having counsel, and you are going to require members to abide by the same rules in terms of disclosure, then they should have the same luxury of having some advice. I think that is fair.

Mrs. Sullivan: I am not disagreeing with the principle that is here. I think it is the wrong place for it. I agree with the principle, and I would not limit it even to legal advice if they think there ought to be some underwriting of the cost of perhaps accounting advice if that is what is required for the member to complete the filing--

Mr. Morin: Any costs incurred.

Mrs. Sullivan: --in a way that is independent. The commissioner is also there, of course, to provide advice, and he is enjoined by the act to do that. But I think that in this bill, because the funds coming from the Legislative Assembly fund are authorized by the Board of Internal Economy, whose rules are set by another act, it should not be in this act.

Mr. Sterling: I only ask who is going to pay the commissioner. Who is going to pay the commissioner? It is the Legislative Assembly that is going to pay the commissioner.

Mrs. Sullivan: Yes, that is right.

Mr. Sterling: So, is it not the same pot?

Mr. Chairman: If you did that, and no matter where you put it, would you put in there as authorized by the commissioner?

Mr. Sterling: I think my colleague expressed that he is willing to talk about limitations of some kind. Whether you have them authorized by the commissioner is probably a good way to do it.

Mr. Breaugh: I want to go through some of this. This is where I have some of my most serious problems around the disclosure stuff. To spend the kind of money that we have spent to prepare the massive amounts of paper that we have prepared to provide so little information is foolishness, it truly is. It is not only foolishness but it is very dangerous.

I took it that the Attorney General was not pleased that I questioned Mr. Aird on the nature of the disclosure documents, but I meant that in all seriousness. I believe that Mr. Aird tried his very best to take the letter of the law and apply it. I think he had the best intentions in the world, but the end result was a bunch of gibberish that meant nothing to anybody. You cannot pass that off on the public as being a disclosure system.

I think the Conservatives have some good ideas in here. I am going to ask the ministry staff to go through this in the next few days and see if you can come up with a disclosure system that is sensible, that tells people the pertinent facts, because there are no pertinent facts listed in the disclosure statements; none at all. To list a numbered company and to suggest that is providing disclosure of a financial interest is crazy. The reason people use numbered companies is to hide who owns the company and what assets they might have, otherwise they would tell you the company name.

We cannot continue with a system which purports to be disclosure but which in fact hides information. I think some work needs to be done and I would say that is not a simple thing. That is probably something that would best be reviewed by a committee of the assembly on a regular basis to test to see whether this year's version of a disclosure statement really does tell people any information.

I would put it to you as straightforwardly as I can. If you took those disclosure statements that were filed this year on this year's cabinet to the gates at the truck plant and said: "Do you want to find out what the Premier (Mr. Peterson) owns in terms of assets? Here it is."

Mr. Polsinelli: Take them the pay equity bill and see what they think about it.

Mr. Breaugh: They might.

Nobody purports to say, "Here is a public financial disclosure statement that no one in the real world can understand." That is called fraud. You cannot do it. That is one major problem that has to be done.

Mr. Morin: There is information that you should not give.

Mr. Breaugh: Then do not give it.

Mr. Morin: And there is information that you should give to the commissioner that the public should not have access to.

Mr. Breaugh: I agree.

Mr. Morin: Let me give some examples. If you had a company which is numbered, and by revealing who owns it or what participation you had in it may help (inaudible).

Mr. Breaugh: Yes.

Mr. Morin: Do you want that?

Mr. Breaugh: Yes. If you want to be in the cabinet.

Mr. Morin: You want that? Let me tell you that you will attract a different crowd--

Mr. Breaugh: To put it as forcefully as I can, to put forward that you have a disclosure system which identifies a numbered company and that deals with conflict of interest is fraudulent. The purpose of using a number for your company is to withhold your identity from the public as to who owns the assets and how much--

Interjections.

Mr. Polsinelli: That is not true.

Mr. Chairman: Mr. Breaugh, that is not true.

Mr. Breaugh: OK. Fine. All of the Liberals on the committee can all say that is not true. You can say I am wrong. I am telling you--

Mr. Polsinelli: There are many reasons to have a numbered company.

Mr. Breaugh: Fine.

Mr. Polsinelli: One of them is you need a corporation tomorrow and the only way of doing it is by numbers.

Mr. Breaugh: Fine. We are not talking about the financial resources of an individual or the reasons why someone would use a numbered company. We are talking about conflict-of-interest legislation, which purportedly discloses to the public the financial assets of the cabinet.

I accept the arguments that not everything needs to be put on the table--we do not need to know what is in everybody's bank account--but I am going to make the argument persistently that you are going to have to find some means of identifying the assets and the liability of the cabinet in a public way that is acceptable perhaps to the cabinet, but whether it is acceptable to the cabinet or the entire Liberal government is irrelevant. If it is not acceptable to the public, you have failed. That is my argument. I think we have to deal with that. I am not suggesting for a moment that it is easy.

Let me go through some of the other proposals that are here, because I think some are relevant. I do not know if 60 days and 30 days are really worth arguing about, but I would put it to you that when someone goes from the status of an ordinary member, where 60 days may be appropriate, to being a minister, the way that person holds his or her assets may change. For example, if other amendments carry, the commissioner may well say, "As an ordinary

member, it is OK for you to continue your family business, but if the family business is running a mine and you have just been appointed Minister of Mines, you can no longer hold that asset in the same way as a minister as you would as an ordinary member." Your financial status will change and there will need to be an update in the disclosure. Some accommodation has to be done there.

On one other point, I would find it sad if we just left an amendment here and ruled it out of order that somehow members are expected to fulfil all of these legal requirements and no assistance is provided to them. That would be quite wrong in my regard. I thought the original concept was to set up an office of the commissioner where members of the assembly could go and get that legal advice. I do not quite agree with the amendment as it is worded because I do not think I should be going to my home-town lawyer to get advice on how to--as I recall during the Fontaine inquiry, much of the problem that was encountered was going back to the local lawyer, who had never seen this kind of information flow before, was unfamiliar with the process and did not know how to file the documents. I thought that was a major part of the problem.

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I think it is clearly the obligation on the part of the commissioner and his staff to provide this advice to the members, and I think that has to be said very clearly in here. You may provide that the commissioner would do so by establishing a network of people who could provide you with that advice. They do not always have to be hired full-time and put in an office on Bay Street. I do not really care how you do it, but I see that responsibility as being the responsibility of the commissioner and not the responsibility of the member. How you do it I do not care, but I think that has to be said.

Mr. Sterling: Can I just comment on that in response because he is replying to us. There are two problems we find with having the commissioner be our adviser. Number one is that generally speaking he is appointed by the majority government.

Mr. Breaugh: Yes.

Mr. Sterling: I am not talking about John Black Aird; I am talking about whatever happens in the future.

Number two is that he is asked to be the adviser and he is asked to be the judge in terms of making the recommendation, and we find that those two roles--

Mr. Breaugh: Let me stop you there because I think we are not arguing with one another. I will give you another example. Under the Commission on Election Finances, the provision of auditing services is pretty tightly regulated. In other words, every candidate in every election across Ontario has to have a proper audit of his books. The commission assumes that responsibility. It does not mean you all go to the same auditor. In some cases it does.

I would see nothing wrong with saying the commissioner is responsible for providing the legal advice to members and the commissioner may designate that there are three lawyers in Ottawa, 16 in Toronto and two in Thunder Bay or whatever.

The argument I am making is that it is his responsibility to pay for that advice. He does not have to take a whole bunch of people on staff, he

does not have to have the same three people advise 130 members. I do not care how you do it, but it is his responsibility to see that it is done and that it is done properly.

Mr. Sterling: The third point I was going to make is there are two kinds of knowledge that are necessary in order to give the proper advice to a member who is making his disclosure or whatever it is. One is knowledge of the act, and that was the first part that you related to, but in terms of some individuals, they may have a complicated system relating to their ownership or whatever, and therefore, it may be better for these particular individuals to go to their normal advisers and say: "Look, I want you to become familiar with this act. You know what I own, you know where I am. In my particular case, I cannot have either John Black Aird or anybody whom he recommends do it because you know all of my particular affairs and are involved with my particular situation."

I would like to give the member the latitude. If he wanted to go to a particular lawyer and get that advice, then he should be able to do that.

Mr. Breaugh: I have no problem with that.

There were a couple of other things here in this series of proposals that are somewhat different. I am not sure that I really agree with all of the stuff that is in here. My basic concern is that the disclosure statements have to be intelligible to the general public. Let me leave my argument there, OK? Whatever you put forward purporting to be a public information on a member's assets and liabilities must be in a format that is understandable by a reasonable member of the public. I think that is important.

Mr. Faubert: I hope you apply that to all legislation.

Mr. Breaugh: If your Highway Traffic Act and your highway traffic signs were written in such a way that the general public could not understand them, you would have an unenforceable act.

Mr. Faubert: But in many cases you cannot. That is why there are lawyers.

Mr. Chairman: Mr. Breaugh, Mr. Offer would just like--

Mr. Polsinelli: When was the last time you read the Highway Traffic Act?

Mr. Chairman: What would be the use of lawyers if people understood legislation or acts? There would be no need for lawyers.

Mr. Breaugh: To show you the utter confusion that you found yourself in, I am not talking about the legislation, I am talking about the disclosure statements. It is as simple as that. The legislation can require 85 Philadelphia lawyers to interpret. That is OK by me, but you cannot continue to put forward a public disclosure statement that the public cannot understand. That is quite wrong. Parker says it is wrong and Breaugh says it is wrong. Take some good advice. I am not even charging you three million bucks for this.

Mr. Faubert: Parker got more.

Mr. Offer: A couple of comments were raised and I think it started

off with the name of the corporation being a numbered corporation. I guess the question I would like some idea from yourself is, how would you have the members characterize their assets? Under the legislation right now you have to indicate not only a statement of income, but the source of the income. We have had some discussions over that point in the last while. For private companies, that income would have to be disclosed if it is controlled by the member, the member's spouse or child.

The concern that I am trying to raise is what further type of information and how that could be characterized, because we are dealing with assets. If somebody owns a share, and this is not the best of examples, but a share is a share, and if a person says 10 shares, do you want that to say 10 units of a corporation that owns X amount of units to explain what a share is, so that the asset, whatever it might be, would be understandable to more people? That, of course, brings in an awful lot of problems for everyone. I am just trying to get an idea as to the greater type of description that you would want for an asset.

Mr. Breaugh: I sensed in our discussion with Mr. Aird that he and his staff were attempting to provide some kind of explanation as to what the corporate investment was. I just say they did not do it and certainly the use of numbers to identify a company does not do it at all. I think a description is appropriate. I do not think that is too difficult to do.

The two areas where I would disagree with the current process; one, the use of the name of the company or the numbered company as being the means to identify. I believe you need a brief, narrative description beyond that. Second, I would disagree with their concept that the value is of no consequence. I would be happy to entertain some proposal which says Mike Breaugh owns shares in the Oshawa Food Co-op. The Oshawa Food Co-op is a now-defunct grocery store in Oshawa. You could go on to list total assets and liabilities of the Oshawa Food Co-op if you wanted to. I think also what is relevant is that Mike Breaugh owns 100 shares of the Oshawa Food Co-op, the value of which is, I think, \$120. There I think you are telling in layman's language what the investment is, what the approximate value of the investment is, which I believe is pertinent.

You may not want to adopt a system which always says the 100 shares of this corporation are worth \$5,520. You may want to say the total investment in this corporation is worth less than \$10,000 or more than \$1,000. You might want to do a classification system. Offhand, I would think that we are not particularly all that interested in a total investment that is worth less than \$100, but I would really get pragmatic about that. We are talking about listing information here. If it is irrelevant, do not list it. If it is not a big pain to list it, why not do it? But I think some indication of value is important. I do not think I accept the argument that Mr. Aird put forward that the value is inconsequential. I think there is a difference between whether I own one share of Bell Canada or 10,000 shares and that there is some relevance in trying to establish whether there is a real conflict there.

I think those would be the criteria I would suggest you do. I think you are going to have trouble with the format of the disclosure statement, so I am going to suggest to you that you put it in a format that is reviewable by a legislative committee or somebody, not the statements of the members although that may be relevant, too, but just to test the waters to evolve, if you can, over a little time period to get something that is reasonably intelligent and relevant.

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Mr. Offer: If the assets were also included, a value, that would go a fair bit in being more understandable to the general public, which they are designed--

Mr. Breaugh: Yes.

Mr. Philip: A description of what they are.

Mr. Breaugh: I do not think this is that difficult because, for example, when the stock market sells shares in a given commodity, people have ways of finding out what that company is, where it is, what it does and brief descriptions are available. Similarly, I do not know that you have to put the actual cash value. This would not cause me a problem, but if it does cause difficulty for people, then there could be some approximation of value of over \$10,000 or under \$5,000 or all assets over \$100 or something like that. Whatever arbitrary process you want to work out would be fine, but a concept of value has to be established that makes it relevant.

Mrs. Sullivan: On that point, I am not certain how relevant the value is or if indeed, in some circumstances, it can even be determined. I am not quite certain what value Mr. Breaugh is addressing. Is he talking about the book value, for instance, of a private company? Is he talking about the value of assets of that company? Is it of any relevance at all unless the member has a controlling interest in a company? Once again, I think the example of the one share in a public company like Bell Canada or one share in Apex, which might be a private company, does not really matter. The thing that matters is if his interest relates to the company and that is what is being disclosed.

Mr. Breaugh: Just to pick up on that point: I appreciate that people are coming at this from different perspectives. It is of no concern to me that any member of the assembly feels that it matters. That is not the purpose of the exercise. The purpose is, does the public have some general understanding? How far do we go out of our way to accommodate them? Whether we think value is important or not, I believe they do and I believe we have to accommodate that in some way.

You can protect people to some extent. I give you that. For example, in a disclosure statement that says this person has two pages full of assets and absolutely no liabilities, if I am to explain that to the constituency I represent, it is not hard to explain. If somebody says, "This guy has two pages of investments here and they are worth \$18 million, so of course he does not have any liabilities," they would understand that. But if you provide them with two pages of noninformation and you say he does not have any liabilities, they will say: "There is something wrong here. That cannot be."

You just get a little closer to the mark among the people we represent. That is all. If I could continue into some of the--

Mr. Polsinelli: Could I just have a supplementary?

The Vice-Chairman: Mr. Sterling is first.

Mr. Polsinelli: I did not see him put his hand up.

Interjection: Yes, he did.

Mr. Eves: He is so short, you did not see him.

Mr. Sterling: Someone is calling me.

The Vice-Chairman: Get angry, Norm.

Mr. Polsinelli: Get even, Norm.

Mr. Sterling: I think the point is well taken by Mr. Breaugh. First of all, I think the raw asset has to be identified in some way. It does not matter whether it is a numbered company or a named company, because a name could be as vague as a number, so the numbered company does not really make any difference. The reasons for incorporation are, number one, to avoid liability if something happens with your corporation, and number two, to hide your assets. Those are sort of the two basic, and the third is usually a tax consideration.

Considering the second one in terms of hiding your assets, the raw asset should be identified by the minister and by the member. I am not certain that I care whether ABC Co. is worth \$100,000 or \$100 million. I think if we draw the basis and put the onus upon the member to say that he must identify any asset in which he has a greater interest either through shareholding or through direct holding over a certain amount--for me, it would be a matter of \$5,000 or \$10,000. I agree with Mr. Breaugh. I think value does matter. Maybe that is just the way I think about a particular matter.

For instance, if I own one share of ABC Co., which has 10 shareholders, each holding one share, and it owns a piece of property at the corner of whatever streets in downtown Toronto, and I have a \$10,000 stake in it, then that should be known by the public. That is the way I think we should do it. It should be the onus on me, not the value it has--\$10,000, or \$100,000 or \$1 million. If I think it is worth at least \$10,000, then I should declare the raw asset. That is where I think Mr. Aird was in agreement, that you have to lift the corporate veil so that particular asset is on the table.

Mrs. Sullivan made a valid point, that in many corporations, you cannot establish what their value may or may not be. The safe tack to take in those particular situations is for you to declare your interest and say, "I am a one-tenth shareholder in AB Consulting Co., which does this kind of business with the government or with various people." That is what I would like to see in terms of section 11 and disclosure.

I think we made a run at it. Somebody has got to make a run at it. What we are saying is that the existing definition and the existing disclosures, as we have seen them, are totally inadequate and tell nothing. I agree with Mr. Breaugh on this. I think the existing disclosure statements are worse than nothing, because they give the picture of a clean bill of health. There are a lot of questions I have about those particular statements in terms of a number of ministers, but they do not tell me anything in terms of those kinds of things.

The Vice-Chairman: Mr. Moffet, do you have a question that you would like to ask?

Mr. Moffet: I just wanted to ask a point of clarification for our purposes. In your proposed amendment of clause 11(7)(b), you would require

disclosure of assets of a widely held corporation in which a member has a substantial financial interest.

Mr. Sterling: Or any financial interest in another enterprise which is a closely held one.

Mr. Moffet: Right. From the drift of the conversation that has just transpired, it seems to me that you would also want, or want instead, disclosure of the assets of a privately held corporation. Is that right?

Mr. Sterling: Yes. That is what the other part says: "or any financial interest in another enterprise." That is a private interest. Legislative counsel agrees with me.

Mr. Moffet: OK.

Ms. Schuh: "Another enterprise" would include other entities too, like partnerships or sole proprietorships.

Mr. Sterling: The widely held corporation leaves me with a little bit of a problem in that--

Mr. Moffet: It may be impractical.

Mr. Sterling: Yes. That is the practicality of it. I am quite willing to listen to a reasonable argument and reasonable limitations on that. For instance, if you own \$10,000 worth of shares in Bell Telephone, I think it is unreasonable for us to expect a statement of all their real estate holdings in Ontario.

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Mr. Philip: I agree with Mr. Sterling also from the point of view of fairness. It seems to me that it is basically unfair that if I happen to own in my own name a condominium in downtown Toronto, under these laws I have to list it and everybody knows that I own a condominium at Harbourfront or whatever. On the other hand, if I form a numbered corporation for tax purposes or for whatever other purposes, I can own ten of them down there and nobody will know, under this kind of disclosure, that I own ten of them.

That is why I think that the assets are important. It is a matter that I can benefit from if a streetcar line goes by my door or something like that. The value will go up. I think if you do not do this, you are going to find that a number of members may well decide to simply transfer their assets into numbered corporations. Anybody can play the game. It does not cost that much to form a numbered corporation and just hold all your assets. Plus there are tax advantages now.

The Vice-Chairman: Any other comments on section 11? Section 12.

Mr. Breaugh: Before you get to section 12, have we covered the proposed amendment that is called subsection 11(10)?

The Vice-Chairman: No.

Mr. Breaugh: I think we should entertain some brief discussion about that. I have no objection to having the Premier indicate in some way some responsibility for the disclosure statements of his cabinet. We are moving

substantially away from a period when it was kind of code-of-the-west time, and we all thought the Premier had the exclusive right to simply set standards and guidelines and all of that and everybody purely accepted that, to a legislative process which is different.

I am not sure of the relevance of this amendment except to say that I think it is useful to have some notation that the Premier cannot totally absolve himself or herself from those traditional responsibilities by means of setting up an act and a commissioner. In other words, I am searching for something which, I suppose, is midway between what we have just come out of, which is a very lengthy period of parliamentary history, where it was clearly the sole preserve of the Premier to decide who came and who went from a cabinet and what was appropriate and what was not, to a period where the Legislature itself is assuming some of that responsibility and doing so by means of a statute and designating a commissioner who is in many ways responsible for it.

But I am favourably disposed--let me put it as mildly as that--to the notion that in some way, and perhaps it is only in a traditional way, the Premier does accept some responsibility for the statements that are put forward by his cabinet. There may be those who will get more irate than this about it. I am not opposed to that idea. I do not know that it means a great deal. I see it in the light that when the Premier chooses a cabinet, he or she selects the cabinet from among the members who will form the government and make some very critical decisions. Part of that, I suppose, now will include some responsibility for the disclosure statements, for the ongoing conflicts.

I think the public has a right to know that in the closed cabinet meeting, if there is a conflict that arises, the minister in the first instance probably has the obligation and the right--we get caught with those funny things where we have both an obligation and a right--to make the declaration that, "I have a conflict here and I should step out of the room and sign the record that says I did not participate in that discussion."

In addition to that, the Premier, as head of a government, also has a bit of an obligation that no matter what kind of law we pass, he cannot get away from that, he just cannot absolve himself of that. I do not see it as being anything more important than that but I do see that as being worth noting. In a general sense, I suppose, it is just like the head of a corporation or a union saying, "I am responsible for what happens here." I am looking at this in much the same light.

The Premier has removed a lot of the responsibility from the Premier and the Premier's office for setting guidelines, seeing that people follow guidelines, all of that kind of stuff. I am quite willing to say the Legislature should do something a little different but I just do not see that he could ever get away from responsibility for his cabinet. I do not see this proposed amendment as being any earthshaking thing, but it is a notation that the Premier always keep some measure of responsibility for the people he puts in the cabinet and some responsibility for their actions thereafter. That is all.

Mr. Philip: I have a question, perhaps of Mr. Sterling or Mr. Breaugh. If you are going to spell out the role of the Premier vis-à-vis this act, what are you going to do about the Chairman of Management Board?

Mr. Breaugh: The distinction I make is that it is the traditional pleasure of the Premier to select his cabinet and to alter his cabinet and no

other member of the assembly shares that particular responsibility. That is the one that is addressed by this amendment. I accept that it is a very traditional point of view, but it is one I happen to hold. You could make a similar argument for several cabinet positions or for several other positions. You could, for example, make some argument that the Speaker would assume some responsibility for the other members. I choose not to do that.

Mr. Polsinelli: I would like to ask members of the Progressive Conservative caucus to explain what their intentions are.

Mr. Sterling: What would (inaudible) is a situation where the Premier has been responsible to make certain that his ministers did not enter into conflict. This act, although heralded by the government of the day as being wonderful and all the rest of it, puts a great burden on the Premier and every Premier of this province in the future. If there is a problem with his minister in terms of appointing somebody who, let us say, he is not certain about, if that minister gets himself into problems, all he has to do is say: "The commissioner is there. There is the legislation. They exclude him."

I think there is a responsibility on the Premier to pick people who are trustworthy, who are capable of taking the public trust and dealing with that public trust in an honourable fashion and with integrity. What we are saying is that the Premier cannot come in, as he did in the Fontaine matter, and say: "Mary Eberts was taking care of that situation. I did not know it. Blenus Wright was looking into that. These other people were all taking care of it. I was a busy Premier. I had a lot of other things to be concerned about." That is the answer we got from Premier Peterson when we were dealing with Mr. Fontaine.

I want to be sure that Premier Peterson sits down and looks at each statement of each of his ministers and says: "OK, this is what we have. This is what the minister has said to me. This is what I know about my minister. This is what I know about my parliamentary assistant," so that when he sees a problem arising, he has some alarm bells that go off. If he had done that in the first instance with Mr. Fontaine--I am not sure whether he had those alarm bells or not.

Mr. Polsinelli: How do you know he had not done that with Mr. Fontaine?

Mr. Sterling: I cannot be sure. All I can do is relate to you when he came in front of the committee. I do not whether it was in this room or wherever. He seemed to want to shove the responsibility off his shoulders and on to hired guns. I am interpreting what in fact happened a year and a half ago. What we have done in this act is that basically we have shifted the total responsibility in terms of the integrity of the cabinet from the Premier's shoulders to the commissioner's shoulders.

Interjections.

Mr. Faubert: Surely that does not mean "approve" in the sense of (inaudible). The responsibility for the statement lies with the (inaudible). The Premier cannot approve. He may review it and in spite of that or because of the--

Mr. Sterling: I am not sure "approve" is the right word. I think Mr. Faubert has a good point and I do not think "approve" may be the right word.

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Mr. Breaugh: All right. But he sees or is aware of--

Mr. Sterling: Acknowledges or whatever--reveal, acknowledge, sign, whatever.

Mr. Faubert: Responsibility for the statement lies with the member making it.

Mr. Sterling: Yes.

Interjection.

Mr. Faubert: It sure does in the sense that--

Mr. Breaugh: I would just make the point that I think we have expressed a concern. Nobody is getting rigid about the exact wording here. We are just registering a point. If ministry staff can find other words they are happier with, I sense people are going to accept that as a reasonable compromise.

Mr. Polsinelli: Mr. Sterling, I do not quite understand your point. I understand the point you are making verbally, but I do not understand the purpose of this amendment. In terms of this legislation, the interpretation you have given it varies with my interpretation of it.

In terms of the Premier's ability, right, responsibility, obligation, pleasure--call it what you may--to choose his cabinet, that is still there. In terms of deciding whether a member of the executive council remains a member of the executive council or does not, that is still there.

The commissioner, as I read it, cannot say that a member of the executive council must lose his position as a member of the executive council. He can, however, recommend that the member lose his seat, which of course would entail loss of position as a member of the executive council.

The responsibility to determine whether or not a minister remains a minister or a minister is appointed a minister still rests with the Premier. What we have done in this legislation is simply to say that the Premier is not going to be the person to decide that perhaps a conflict-of-interest situation has arisen and that a member of the executive council is in fact in breach of an act, a guideline, a law or a rule of conduct. We are establishing an independent third party, hopefully approved by all members of this House, to make that determination for the Premier.

Once that determination has been made, once the commissioner says, "Yes, Minister X has breached the legislation; he is in conflict," then it will still be the responsibility of the Premier to determine whether or not he remains a member of the executive council. Any Premier worth his salt, I think, would probably dismiss that member, because he probably could not stand the political heat. But if he wanted to stick by his guns, he could, and there would be nothing the Legislature could do to have that member ejected from the executive council.

Putting a requirement in this legislation saying that the Premier has to approve, look at, peruse--use whatever language you want--the disclosure

statements of the parliamentary assistants and the members of the executive council, in my opinion, has no effect, no purpose.

Mr. Sterling: Then you do not object?

Mr. Polsinelli: I am saying it is senseless. I do not think we should have excess verbiage in there that has no meaning. Unless you can bring forward some other type of cogent argument that would convince me, I would not be able to support something like this.

Mr. Sterling: Read our speeches on second reading.

Mrs. Sullivan: Just on this point, one of the things that I really felt was one of the strengths of the bill was that it removed the conflict of information and vetting from the Premier's office into an independent and more public forum.

As I understand the intent of the amendment, what would happen in the process would be that indeed it would be moving right back into that closed-door, behind-the-scenes situation, because the commissioner would be responsible for disclosing to the Premier the information relating to members before it was disclosed to the public.

I have problems with that. I think maybe what this amendment is doing is the exact opposite from what we really want the bill to do.

Mr. Eves: I do not see the amendment having that effect at all. The commissioner will still be responsible for any breaches. All this amendment does, quite frankly, is make the Premier familiarize himself--or whichever terminology you want to use--with the disclosure statements of the members of his executive council, the people that he and nobody else has placed in the public trust. Quite frankly, the purpose of this subsection is probably more political than anything. It is preventing the Premier from saying: "I don't know. I didn't look at their statements. That is the commissioner's job."

If you are going to appoint somebody to the executive council, the commissioner does not appoint; the people of the province do not appoint them; the Premier appoints them. He cannot shirk that responsibility. He cannot say: "That is somebody else's baby. That is not my problem. I did not know that. That is the commissioner's job." It makes him acquaint himself and familiarize himself with it. Hopefully, any premier worth his salt would do that anyway, but obviously that is not always the case.

The Vice-Chairman: Any further comments on section 11?

Mr. Eves: In concert with the amendment we made previously with respect to one business day, we are proposing a section 12, which indicates that within one business day of receiving the disclosure statement of a member of the executive council or a parliamentary assistant, the commissioner file it with the Clerk of the Legislative Assembly who shall make it available for examination by the public. Then we go on with the proposed section 12a--for lack of better terminology--which empowers the commissioner to verify the accuracy of disclosure statements and just outlines some of his or her powers with respect to conducting an inquiry under the Public Inquiries Act.

Again, it is a thought. It is something we have tried to put into words and something for discussion or consideration.

Mr. Polsinelli: I am concerned about the one business day, again.

Mr. Eves: There again, the member for Oshawa (Mr. Breaugh) has made that point. It is just a principle.

Mr. Polsinelli: No. Here you have more than a principle. In effect, the disclosure statement that is made to the commissioner may not be the disclosure statement that is prepared by the commissioner for the public; in which case, one day may not be adequate time for the commissioner to do his work.

Mr. Eves: That is a valid point.

Mr. Breaugh: I have made my views clear on the one-day requirement and stuff like that; but let me say that I think it would be useful if staff could provide reasonable time frames that could go through the bill with some uniformity that addresses everybody's concerns about how long it takes to do something. I sense that there was a problem previously where there were all kinds of different time limits and no one knew what the common one was. It is kind of like division bells around here. How long are the bells going to ring? I think some uniformity would be accurate there.

The ones I have concern about, oddly enough, are the amendments that are proposed to section 12a, having to do with the commissioner verifying the accuracy of the disclosure statements. I see a bit of a conundrum here. There is no sense in having a commissioner if the commissioner does not have considerable powers to verify the accuracy of the statements.

The conundrum that I see is that I am not anxious to set up another huge piece of work here, which is exactly what could happen. The problem that I have is that I heard Mr. Aird say repeatedly when he was before the committee that he sat across the table and asked people if the facts were accurate. They said, "Yes." He had no alternative but to accept them.

I do not need a commissioner, for sure, if that is what we are going to do. If that is the intent and the way the process works, why bother with a commissioner? If his only power is to sit at a table with someone and say, "Is this true?" and the person says, "Yes," and he cannot do anything about it further than that, then we only need one chair at that table. The member can come in and say: "This is true. I say so, therefore it is."

I am going to reserve judgement on this one for a little bit until we get at how far we want to go with this. But I would argue that a commissioner, and particularly this one, who is put in a position where his personal reputation and integrity is on the line all the time, who will make probably the distinction about whether someone has to sell an asset that is worth a lot of money or not in order to be in the cabinet, had better have some powers to verify that the information provided to him is accurate.

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Perhaps this goes a bit far. I do not know. I think the point is well made, though. Someone has to address himself to that. I think that under certain circumstances--for example, such as we have already seen exercised--this is not an unusual or difficult proposal to accept.

I am a little concerned that there would be a major public inquiry at the time that any disclosure statement is presented to the commissioner. I

tend to agree that he may use discretion on that, but I do think that when we say that the commissioner verifies the accuracy of the statements provided to him, it has to be a bit more than just the member saying it is true. I do not quite know how far to go with it.

Mr. Offer: If I might, let me carry on with this line of questioning just as a matter of clarification.

Mr. Eves, when you read your amendment to section 11 and section 12, read together they seem in general terms to say that the member provides a statement--forgetting about what that statement contains--that he brings that in to the commissioner and that one day later the commissioner publicizes it.

Under the legislation, as we have it here, we have the statement, there is the statement by the spouse, and there is a meeting with the commissioner. During the meeting there is more information that may be obtained by the members as to what the disclosure statement is all about. When the final statement is made public, it truly represents what the member's assets are.

I am wondering why this revolving door type of statement has been put in through amendment. I would just like to get an idea as to why you would want somebody to just have a statement delivered and publicized with no intervening opportunities.

Mr. Eves: That was not our intention. You refer to it as the final statement. I do not think that when somebody goes in with a proposed or draft statement--when I am drafting a commercial contract as a lawyer, for example, my first draft is not the contract, just the way I do not think the initial draft of a statement that a member or his or her spouse goes in and talks to a commissioner about is the be-all and the end-all of his statement. I would think that the final statement, probably in almost all instances for a reasonably astute individual as a member, would probably be filed on or about the 30th or 31st day if that was the time line.

I do not think we are talking about different things. I am talking about the final statement, when the commissioner has met with the member and his or her spouse or whomever else has to supply a statement to the commissioner. They have sat down, they have discussed different assets, they have had conversations and they have got independent legal advice, if that is the case. The final product comes out of that.

I do not see any harm in having some time limit--and I agree with Mr. Braugh, perhaps one business day--Mr. Polsinelli's is totally unworkable. Perhaps we should discuss that, and perhaps we can come up with a general consensus as to when that has to be made public. But once the final product is delivered, I think there should be some time line upon which it is required to be made public. I do not care what that time line is.

The Vice-Chairman: Any further comments on section 12?

Mrs. Sullivan: Yes, relating to subsection 12(a). I have some concern here on subsection 12(a). I think under the proposed bill, the onus is on the member to present a truthful disclosure statement. This proposed amendment shifts the onus for the truth of the statement to the commissioner, who for some reason unbeknownst to me--I have not heard any rationale for any understanding of why the commissioner--may say, "I do not believe the statement that the member has filed and therefore will conduct a public inquiry."

The obligations of this act are on the member relating to the disclosure, and the truthful and full and fair disclosure. It is the member who would bear the brunt of filing an incorrect, inaccurate, or unfull statement. I would like to see that stay with the member and not with the commissioner.

Mr. Sterling: Before we get into a large discussion, this is one where we feel so-so, so let us not spend too much time on this. What about some of the other ones? I am not trying to cut off discussion totally.

Mr. Philip: I think an analogous situation would be that I could be a mortgage broker and I have an obligation under the act to file adequate information with the registrar of mortgage brokers. That does not eliminate his obligation to verify that the information I am filing is accurate and full and satisfies the Ontario Securities Commission.

Mr. Sterling: Let me state our intention. Our intention on it was that if the commissioner got something that appeared out of whack, he would then be able--and I think in terms of draftsmanship, we were going to make this permissive rather than "shall," it should have been "may"--to undertake to look a little deeper if he wanted to, without somebody asking him to.

Mr. Breagh: Just in conclusion, I know it does not say that, but the inference is very clear that you are purported to put forward legislation which means that when I put in my disclosure statement, it is true. We are purporting to say that a lawyer somehow assisted me in drafting accurate information. Whether the act says that the commissioner has to verify the information, the fact that he tables a report makes him part of it. There is no reason for it to go to him unless in some way he accepts some responsibility for the accuracy and an honest attempt to portray a financial situation. So whether you put it in the act or not, he is drawn into the process.

The clerk of the assembly tables documents with the assembly. A clerk who tables documents that he knew were false would not be doing his job particularly well. So I agree that I do not think the wording is correct. I do not think we want to go to those extremes, but I think that somehow we have to acknowledge that by setting up this elaborate system, we are assuming that a lot of people are putting their integrity on the line when these disclosures are made.

Mr. Polsinelli: I recognize that Mr. Sterling has indicated that his intention was not to establish a third Ontario police force to verify the disclosure statements made by members. So that having been said by Mr. Sterling, I have no further comments.

The Vice-Chairman: Are there any further comments on section 12? Section 13.

Mr. Breagh: I think we have had enough discussion.

Mr. Eves: Yes, we have. Section 13 that we have just talks about legal advice again, and we have already covered that so there is no point in delaying--

The Vice-Chairman: Section 14.

Mr. Breagh: To be honest, I do not know why this amendment is before us. I thought that was the process--

Mr. Eves: Subsection 14(4) of the proposed act reads, "Where a matter has been referred to the commissioner under subsection (1) or (2), the Legislative Assembly or a committee thereof shall not conduct an inquiry into the matter." We are saying, "shall not conduct an inquiry into the matter until the commissioner has reported his or her opinion and has recommended that such an inquiry be conducted."

Mr. Polsinelli: This seems to totally defeat the purpose of the act, because we are establishing an independent commissioner to rule, on an impartial basis, as to whether a member has done something untoward and has contravened the conflict-of-interest legislation. What this amendment says is that the commissioner may choose to hold a public inquiry under the Public Inquiries Act, have an investigation drag out for six months, have witnesses come before him, spend a whole bunch of money if he chooses to go that route, finally prepare a report, bring that report to the Legislature and the Legislature can do it all over again through a committee.

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Mr. Sterling: I would like to ask legislative counsel how many other acts of the Legislature limit what the Legislative Assembly of Ontario can do in the future. I guess that is my concern about this particular section. What you are saying to the Legislative Assembly is you cannot do something in the future regardless of the--

Mr. Polsinelli: No, Mr. Sterling, you are not saying that. What you are saying to the Legislative Assembly is you cannot do what you are purporting to do until you amend the legislation. The Legislative Assembly always has the authority to amend the legislation.

Interjection.

Mr. Polsinelli: Any piece of legislation. So they could amend the conflict-of-interest legislation.

Mr. Sterling: But now we can have a resolution of the assembly and say, "We want to have an inquiry looking at Claudio Polsinelli's legal practice."

Mr. Polsinelli: Do it by bill rather than by resolution.

But the purpose of the act is what we are talking about here, whether or not we want the assembly to conduct that type of investigation, whether or not we want committees of the assembly to go through some of those sham hearings that we had. I do not mean the hearings were sham but the process, I think, was a bit of a sham with respect to the alleged conflict of interest against a couple of our members last year.

Is that what you are advocating? Are you advocating that after the commissioner has gone through a public inquiry that a committee of this Legislature can go through a similar process? That is what your amendment seems to be indicating and that is something totally contrary to what we are trying to do.

Mr. Sterling: What we are saying is we are giving the commissioner more material. If the commissioner for some reason cannot get to the bottom of the matter with whatever tools we have given him, he is recommending that a legislative committee look into the matter.

Mr. Eves: The last line says, "and has recommended that such an inquiry be conducted." Are you telling me that even if the commissioner wanted that done, as far as you are concerned he should not have the right to do it and the Legislative Assembly should not have the right to look into it?

Mr. Polsinelli: That is ridiculous. The commissioner can undertake an inquiry under the Public Inquiries Act. Are you saying after he has done that he can come back and conduct an inquiry through a committee of the Legislature?

Mr. Eves: If the commissioner recommends it.

Mr. Sterling: Maybe we should give legislative counsel an opportunity to interact with the members.

Mr. Philip: I don't see what you are--

Mr. Sterling: I guess what I am saying is, why do you cut off a process which the Legislative Assembly have every right to do, that is, order the business of a particular committee?

Mr. Philip: By defining this, though, you are--

Mr. Sterling: Well, maybe we should not define it. We should just move to take the whole section out.

Mr. Philip: That makes a lot more sense.

Mr. Sterling: Maybe we should do that. I asked a question about a half an hour ago.

Ms. Schuh: I think your question was whether there are other provisions similar to this that restrict the Legislative Assembly's authority to conduct inquiries into matters that are pending elsewhere. I am not aware of similar provisions. I can do some research and find out. Apart from the sub judice rule, I am not aware of any law on that point.

Mr. Philip: If that is the case, then (inaudible) subsection 4 would also fall under that because that cuts off--

Ms. Schuh: No, the sub judice rule would only apply to something that was pending before the court.

Mr. Philip: No, you are missing my point. Subsection 4 cuts off any inquiry by the Legislature as long as something is before the commissioner.

Ms. Schuh: Oh, you mean subsection 4 in the--

Mr. Philip: Yes, and they both do that. If you get a majority government which happens to be machiavellian enough to have a puppet commissioner or a weak commissioner, something could be sent off to a commissioner who could investigate it for four years and you would never be able to deal with the matter.

Mr. Breagh: Not that anybody has ever tried this act before, not in the last two years.

Mr. Philip: I hate to be suspicious, but if somebody has been on a

committee that has been asking for things that have been under inquiry for the last two and a half years, it can be done.

Mr. Breaugh: I was just going to suggest since there are four opposition members and three government members in the room at the time, maybe we could take the votes now and get rid of this. We will show you what majority is really like.

The Vice-Chairman: Order, please.

Mr. Sterling: I think what we should do in this particular circumstance is just take out subsection 4 altogether. We will probably put an amendment forward on that.

Mr. Philip: And failing that, Norm, are you willing to go with this thing and take it to court?

Mr. Polsinelli: Perhaps the corollary of this, for the benefit of Mr. Sterling, would be that if you are advocating this, you would also be advocating that a member may be able to appeal the commissioner's ruling to a court.

Mr. Sterling: That might be a good idea actually.

The Vice-Chairman: Are there any other comments on section 14? Section 15.

Mr. Breaugh: I have a little problem with this proposal. I guess what it comes down to is that I do not quite have a good sense in my own mind on how aggressive I believe the commissioner should be in monitoring the process. To go as far as putting what I see as a major responsibility for monitoring on to the commissioner causes me some difficulty, but I have not yet quite found the good ground that says we have found a balance here. I am not going to give you a great résumé whether I support this amendment or not.

Mr. Sterling: I guess the reasoning behind this amendment is that if a member of the public writes to the commissioner and says that something is happening, I do not know whether we should give the power to the commissioner to tag on to that--

Mr. Breaugh: I see this as a kind of Gary Hart provision to monitor the activities of members. It has not worked out well.

Mr. Sterling: We are not feeling that strongly.

Mr. Breaugh: These provisions cease after 6 p.m.

Mr. Eves: Is that standard or daylight time?

Mr. Breaugh: Whatever my watch says.

The Vice-Chairman: Are there any further comments on section 15? Section 16. Section 17.

Mr. Breaugh: Under clause 16(1)(a).

The Vice-Chairman: Section 16 or 17?

Mr. Breaugh: It is clause 16(1)(a), the amendment proposed there.

I am not sure I disapprove of some notation that some inaccuracies were put in, but I do not know why a commissioner would want to file an inaccurate piece of paper unless he thought there was some malicious intent, in which case I would be more interested in his opinion on whether someone did something maliciously or simply slipped up. I do not know why you would want a copy of an inaccurate disclosure statement filed anywhere. If it is not accurate and the commissioner is aware it is not accurate, I suggest his job is to make it accurate and not to file wrong information anywhere. I am not sure what the reason would be.

Mr. Philip: I will repeat an argument I made under the Residential Tenancies Act or whatever other act that applied to similar kinds of conflicts. It is the same argument. The Interstate Commerce Commission in another jurisdiction feels 24 months is appropriate. I still think that one year, 24 months, is still a very brief period of time and is more appropriate than 12 months. I do not suppose I am going to convince anybody and I am not going to repeat the arguments I made from the Interstate Commerce Commission. If anyone wants to read them in Hansard, he may do so. I am sure the vote will wind up the same as it has in the past.

The Vice-Chairman: Are there any further comments on section 16? Section 17.

Mr. Sterling: What happens if somebody files a false disclosure statement?

The Vice-Chairman: Are you talking about section 16 or 17?

Mr. Sterling: Section 16.

Mr. Breaugh: I would be more interested, and I anticipate that the act require, that where the commissioner finds someone deliberately filed wrong information, he report that fact to the assembly and he report his findings on that fact to the assembly. I do not want him to put wrong information in an annual report, for example, or when the disclosure forms are filed with the Clerk of the assembly. If there was a deliberate attempt to mislead, he should report on that and any findings he has around that.

But I think it has to go the extra step. Otherwise, it seems to me from my experience with such things that there will be lots of wrong information on even more pieces of paper filed with the Clerk. I seem to recall that there were many statements that were inaccurate, and the purpose of the exercise was to try to determine when they were inaccurate and why and to get the accurate information.

Mr. Sterling: Do you want an amendment there, Mr. Breaugh, to section 16 to deal with that in some way? I do not know if there is any sanction against somebody who--

Mr. Breaugh: No, not this one. We have an amendment which we would be putting on section 17, which you have had. This is the basic argument about setting up a registry for lobbyists, and it would come in under this section. But we have basically had that argument, so I do not think you want to go over it again.

In section 18 there would be a similar provision for lobbyists, allowing the government to set regulations for them.

I think we are through.

The Vice-Chairman: Section 17, section 18, section 19, section 20. That is it. I will not say, "Shall the motion carry?" for sure.

Mr. Breaugh: Well, it would be a tie now. There are four government members sitting in committee with four opposition members. Whoever the whip is for this committee for the government side is doing a terrible job today. It would be a dead heat.

Just in conclusion, there were just one or two things that maybe we should clarify before we proceed on Monday with clause-by-clause. There was an indication from me that I might find a more appropriate place to place the amendment on divesting than in the one that has been drafted by legislative counsel so far, so you may see different wording in a different section, because it has occurred to both of us that perhaps there might be a better way to express that concept. If the ministry accepts the idea and you think it would be more effectively put in some other section of the act or using different words, I would certainly be amenable to that.

The other one was the three drafts that were placed before the committee this morning. I think the best thing to do is just to let you look at the three proposed amendments and see which one you prefer and we can proceed on Monday to do that.

The Vice-Chairman: Next week we will be meeting next door in room 230, Monday at 10 o'clock in the morning.

Mr. Breaugh: So the schedule for next week is Monday at 10 a.m. and 2 p.m., Tuesday at 2 p.m., Wednesday, 10 a.m. and 2 p.m., right?

The Vice-Chairman: Right.

The committee adjourned at 4:44 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

MONDAY, JANUARY 18, 1988

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. Sterling

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Also taking part:

Sterling, Norman W. (Carleton PC)

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, January 18, 1988

The committee met at 10:25 a.m. in room 230.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: As I understand it, we are going to start clause-by-clause today. There was some feeling last week that when we started we should start with section 2, rather than section 1. Are there any thoughts that we should start with section 1, which is the definition side, and then go on to section 2, or can we start with section 2?

Mr. Breaugh: Before we start with either one, can we get some sense from the Attorney General as to which of the proposed amendments by anyone are acceptable to the government?

Hon. Mr. Scott: Yes, you can. First--

Mr. Breaugh: Before you start, I should tell you that we discussed the power of the commissioner to cause some divesting. I have tabled with the committee a new draft proposal basically setting it aside in a separate section. Generally, it was felt, if we were going to do that, it was worthy of separating it out, putting it in a separate section. I think that is off being printed up now. That is the only change.

Hon. Mr. Scott: On the general subject of divestment, our position is the same as it was in the House, that is to say, any member or cabinet minister should be entitled to divest any asset he holds at any time for any purpose, but that there should be no power in the commissioner to require him to divest. If he fails to divest, it will be open, under the present act, for a member to complain that he is taking decisions which amount to a conflict of interest in view of what he holds. It will always be the obligation of the Premier to answer if he puts a person in a cabinet position where the possibility of taking decisions is significantly reduced. For example, if there was a minister who owned mining shares, the minister, on going into cabinet, would be entitled to divest himself of those mining shares if he wanted to do so.

However, there would be no power in the commissioner requiring him to sell them. If he went into the cabinet and participated in decisions that might be said to affect the value, indirectly or directly, of those mining shares, a complaint could be made to the commissioner and determination made

that there was a conflict in the normal way that the act contemplates. Then his seat would be vacated, if those things happened. We do not accept the proposition that the commissioner should be allowed to decide what members have to sell.

The original divestment motion that you proposed, which related to gifts alone, we have no difficulty with. Assuming I understand it right, I have no difficulty with the amendments that you have proposed, designed to get the report of the commissioner before the House and responded to within the appropriate time. I have a couple of comments on the precise language that has been used, but I have no difficulty with that sort of arrangement of laying the report before the House within a specified time and requiring the House to respond to it within a particular time. I think that deals with a legitimate concern.

I think the other major amendment you brought forward is the one dealing with lobbyists. As you observed the other day, the amendment does not deal with lobbyists. It really says that lobbyists will be obliged to register and then allows the regulatory process to devise some system of registration. The problem with that is your own acknowledgement that the amendment does not deal with the subject, though I think you proposed it to emphasize to the government the importance of dealing with it as quickly as possible.

It seems to me that allowing that important matter to be dealt with by regulation is not really satisfactory, that what the government should do is to present a bill that will deal with lobbyists. I have indicated to you that we are looking at this subject. It is not a simple matter, as it turns out, though it is not the world's most complicated matter either, to be fair. We are looking at that.

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Frankly, from my point of view, I think it would be an unfortunate disposition of the matter to leave the question of the obligations of lobbyist to the executive council, although I understand and take note of the message your amendment is designed to send, and I will communicate that message as effectively as I can, but at the end of the day I think we would have created an unfortunate precedent if we developed a conflict-of-interest theory which said the executive council can decide all these things through the regulatory power. I would not want that to happen with respect to public servants or members or anybody else, nor lobbyists. Having recognized that the message is being sent, having taken it to heart, we will do what we can on other fronts and zing your motion.

With respect to the Conservative motions, there is a large volume of them. With the greatest respect, they seem to me to amount to a fairly fundamental rewrite of the statute. The ones that deal with so-called apparent conflict, we respond to as we did the other day, that is, if anybody thinks there is an apparent conflict, their obligation is to go to the commissioner, if they wish to do so, and obtain a ruling about whether there is a conflict. If there is not a conflict, it should not be judged that there is because some person perceived that there was.

The second sort of major area of amendments that the Conservatives propose, have to do with the possibility that some persons are undertaking quasi-judicial decision making. I made my observations clear about that the other day; it is a matter for a court, not for the Legislature.

The Conservatives also have an amendment about a register, and I am very sympathetic to this idea that there should be a register, but I think at the end of the day, we will have to oppose the kind of proposal that is made. Let me just take a moment to make one more observation about it. The conflicts are going to occur in a variety of forums, or fora, as academics say, some of which will traditionally meet in private, some of which will meet in public. The obligation is to make a declaration with respect to a particular matter, and the public declaration of that particular matter will breach the secrecy rule of that committee or group.

For example, there is no question but that conflict of interest provisions will apply with respect to cabinet and with respect to caucus. If a decision is taken in caucus where a member of the caucus has a conflict of interest under this bill and the decision of his party is being developed with respect to an issue, he will have to declare his interest in caucus and not participate further. The idea that caucus should then have to go to a commissioner and register what they were talking about and who disclosed a conflict is, it seems to me, an intrusion into the operation of a system that our governments traditionally have recognized as being protected.

The purpose of the declaration is to allow the member, if an allegation is made, to protect himself. For example, if there is an issue about the decision that the New Democratic caucus is going to take on the Spadina expressway extension, and it turns out that a member owns a lot of land that will be purchased by that expressway, that member of caucus, before taking a decision, will have to declare a conflict. However, I do not think it should mean that the member and the caucus have to reveal publicly that declaration, because to do so would require them to reveal that they were talking about the extension of the Spadina expressway. You know what that would do to the seats they have in downtown Toronto.

Mr. Breaugh: It would ruin democracy in the free world.

Hon. Mr. Scott: We know you have been talking about it, but we do not think that you should necessarily--

Mr. Breaugh: Aw. Bring on Bobby Callahan and get some class in here.

Hon. Mr. Scott: The other Conservative amendments basically deal with extending the rules for cabinet ministers to parliamentary assistants and to senior public servants. In the latter case, we believe the Public Service Act is the appropriate vehicle. It seems to me wrong that a public servant's entitlement, under its own statute, should be governed by an officer of the assembly.

With respect to parliamentary assistants, they do not participate in cabinet or in cabinet committees, and it strikes me that they should not be covered and treated as if they were cabinet ministers. There is no question that they have influence, but there is no doubt that critics have influence too, depending on the shape that democracy has imposed on the assembly, and there is no doubt that chairmen of committees have influence. It seems to me that if we are going in that direction, you would want to include those people as well.

Those are the decisions that the government generally has taken with respect to the bill.

Mr. Breaugh: There is one other decision you have obviously taken that I think we should put on the record. We began this procedure by agreeing that we would try to get a consensus process at work. It is obvious that the one other decision the government has made this morning is that consensus is not worth bothering with in this instance.

Hon. Mr. Scott: No, that is not true. With respect to the Conservative amendments, the bill that they propose is fundamentally a rewrite. It is a different piece of legislation than the legislation before us. I have tried to see how their amendments could be incorporated within the bill and I do not think it can be done without redrafting the whole legislation and making it a very different kind of regime. This regime is based on the Aird report and the Sinclair Stevens report and takes that approach.

I did not understand the effort to find consensus to amount to an assertion that we would be prepared to abandon the original approach. I assumed that the original approach was generally accepted by some of the speakers at second reading, and what we would look for would be modifications that would make it work better.

With respect to the NDP amendments, we have accepted a number of them which I believe will improve the bill. We have not accepted the divestment amendment, which I actually have not yet seen, because that would mark a fundamental difference in the direction the bill takes.

Besides, I did not understand that the search for consensus meant we had to take what was proposed. I understood it meant that we would carefully consider what was proposed to see if it could work in a bill that has this general framework. However, I understand your point.

Mr. Breaugh: I think before we start then, we should put on the record that there is a substantial change under way this morning. Quite clearly, I thought that both the opposition parties put on the record, in general, amendments that were not written in stone. Each of us sought to ask the government to find what it could in there that it could accept. We sought to ask the government regularly last week to rewrite the amendments. If they were unhappy with the wording, if they did not like the way it was put together, if they thought it was inappropriate in a particular section, they could find their own words.

For my part, I do not care precisely how an amendment is worded but I am trying to put to you that there are a couple of things here. I say again now what I said initially: I believe and my party believes that some form of divestment procedure where the commissioner makes the judgement call is essential to make this bill workable. I do not care what form and shape it takes and I do not particularly care about the words that express it. But that principle, I believe, is essential if this bill is to be something that is workable and usable.

1040

I thought I heard the Conservatives, as they went through their amendments, say very much the same thing, that they were not concerned about whether all the amendments carry. There was no gun to anybody's head here. They were putting forward ideas and searching for a consensus among the committee members as to how we might proceed from there.

While I am not suggesting for a moment that the government has to accept opposition amendments, I am saying that I thought we went through a very careful exercise last week to try to point out to the government where there were areas we thought improvements could be made, where there were areas we felt improvements were necessary. We tried to note the differences.

We tried to make a fairly open plea that any form of, for example, divestment is acceptable to us, but the principle must be somewhere in here. It really goes to the heart of the bill. This is not something where the conflict is dispensed with by means of a disclosure statement. There will be occasions--rare ones, I think--when it will be essential that the commissioner has the power, under some circumstances, to order that a member of the cabinet divest himself or herself of a certain set of interests.

You can qualify that as much as you want, and I do not care where you place it in the bill or how you word that authority, but I do believe there is a requirement, in order to make the bill acceptable to me and to my party, that some form of divestment process be established. I have tried to give as much notice as possible so that no one could say this was a surprise.

Hon. Mr. Scott: Divestment means the commissioner should be allowed to direct that a member should sell an asset. What we have done in this bill is say that the commissioner does not have that power, but if the asset is maintained, the commissioner will be entitled to declare that the member has vacated his seat. In other words, we recognize that the ownership of an asset may lead to a conflict.

The question is, what should the power of the commissioner be? Should the power of the commissioner be to direct someone to sell an asset or should the power of the commissioner be, in effect, to say, "As long as you have that asset and take decisions of that general type, you shall vacate your seat." We have opted--it may be wrong--for his power to vacate the seat.

I believe, confronted by that power, that may be a major inducement to encourage people to divest, but the idea that a commissioner should have the right to require someone to sell a building or a business or a family asset, even if he is not taking any decisions that have anything to do with that, is to give an extraordinary power to a commissioner. However, I think our remedy has significantly the same effect. The commissioner can declare the seat vacant, and the member runs the risk that will happen.

However, we can debate about that as we go along. We have bought all your other amendments.

Mr. Breaugh: Just in closing, though, I do not want anyone to run away with the perception that we are now proceeding in a consensus manner to formulate a conflict-of-interest bill. We are not. That is clear. I want that on the record.

Although we have supported this bill in principle on two occasions now on second reading, unless I hear something different, I think this is a bit of a farce from this point on. I have attempted to work with the various government members to try to find a consensus, and the government has arrived this morning and told us that it is not going to proceed in that manner. That is, of course, quite proper.

Hon. Mr. Scott: We bought four out of five of your amendments. I do not know what you are complaining about. I understand what the Conservatives are complaining about.

Mr. Breaugh: That is pretty tricky. We only moved three.

Hon. Mr. Scott: No, you have told us you have another one.

Mr. Eves: Just very briefly, I would echo many of the comments made by my colleague from Oshawa.

It is quite true that we tried to propose amendments that would substantially change certain portions of the act. We disagree, I guess, in principle with a couple of basic tenets of the act, one being that in certain instances, especially members of the executive council--and we would even go so far as to say parliamentary assistants as well--should be required to divest themselves. We quite appreciate that it is always available to any member of the Legislature or member of the executive council or parliamentary assistant to divest himself of an asset if he thinks he might have a potential conflict. I think that goes without saying, and that is really not saying anything that has not been in existence for 100 years in Ontario with or without an act.

If Ontario is putting forth conflict-of-interest legislation, I think it should be a leader in the country of Canada among provincial governments and the federal government. We are the Legislature or elected body that is putting forth a conflict-of-interest bill now in 1988, and I do not think we should be taking a giant step backward. I think we should be taking a step forward instead of trying to hold on to the status quo or, in the case of cabinet ministers with respect to divestment, in our opinion, actually going backwards from what has been the norm in this province for the past couple of decades.

We will proceed with respect to our amendments from time to time as we go through the bill. We quite appreciate that some of them will not carry. Some of them, quite frankly, were introduced to stimulate discussion and thought, and perhaps even to achieve a commitment from the Attorney General that other pieces of legislation will be looked at. When we discussed this overview on Thursday, we made those points quite clear as we went through the legislation. So we will proceed as we go through clause by clause of the bill.

I might say now that we will not be engaging in any prolonged debate on any of these sections as we go through clause by clause, because we do not think that would be constructive. We made most of our philosophical points last Wednesday and Thursday and we will just be proceeding in an orderly manner as we go through the bill.

Mr. Chairman: Are there any amendments to section 2?

Mr. Breaugh: What are you doing on section 1?

Mr. Chairman: I thought we had agreed that we were going to hold that because it was the consensus last week that we not deal with section 1 until we deal with the other sections because there may be changes in the definitions.

Hon. Mr. Scott: Can I suggest that perhaps it might be easier to deal with section 1 at this stage with the--

Mr. Breaugh: We are operating under our consensus procedure, and the Attorney General has changed gears on us this morning.

Hon. Mr. Scott: No, no. I do not care where you begin. You can begin wherever you want.

Mr. Chairman: If you want to begin on section 25, I will start on section 25 and work backwards. That means the first five or six sections we will do very quickly. Where do you want to start?

Hon. Mr. Scott: Start with section 2. That is where the consensus is.

Mr. Chairman: That is where--

Mr. Sterling: Start with the title of the bill so we can rename this bill.

Mr. Chairman: Do you want to start with section 1?

Mr. Polsinelli: No, hold section 1.

Mr. Chairman: You want to hold section 1? OK, let us hold section 1.

On section 2:

Mr. Chairman: Section 2 deals with conflict of interest. Does anyone want to put forth any amendments on that?

Mr. Eves: With respect to section 2, we served notice last week that we would be introducing a major overhaul, actually, of section 2.

Mr. Chairman: I think everybody has this amendment before him. Would you continue to read yours then, Mr. Eves?

Mr. Eves: I suppose we should move subsection 2(1) separately.

Mr. Chairman: Mr. Eves moves that section 2 of the bill be struck out and the following substituted therefor:

"2(1) For the purposes of this act, a member or senior public servant has a conflict of interest when he or she makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that, in the making of the decision, there is the opportunity to further his or her own private interest or that of his or her own spouse or minor child."

M. Eves propose que l'article 2 du projet de loi soit remplacé par ce qui suit:

«2(1) Pour l'application de la présente loi, le membre ou le fonctionnaire supérieur a un conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses propres intérêts personnels ou ceux de son conjoint et son enfant mineur.»

Mr. Eves: I would like to make that amendment separately, if I could, instead of moving the whole thing. Otherwise, we can re-read the whole thing after we receive the chairman's comments.

The purpose of the proposed amendment is to include senior public servants in the definition of--

Mr. Sterling: You have to read the motion in.

Mr. Chairman: I am advised--

Mr. Breaugh: Procedurally, I think it would help if he put both on the table and then simply asked for permission to divide it.

Mr. Chairman: Yes, but I am also advised--I am just wondering with regard to the Conservatives, who the members of the committee are today.

Mr. Eves: Voting members of the committee today are myself and Mr. Johnson. Mr. Sterling is here this morning as an interested party and will be on his way to the free trade committee.

Mr. Chairman: Since you are the whip, would you write out a notice to that effect, Mr. Eves?

Mr. Eves: Sure.

Mr. Sterling: Have you got a substitution slip?

Mr. Chairman: The chair will entertain it as soon as you get it. Will you proceed, Mr. Eves,

Mr. Eves: Sorry, Mr. Chairman. I will read in subsection 2 if you would prefer to do the whole thing at once and then we can--

Mr. Chairman: I think that would be best.

Mr. Eves moves that section 2(2) of the bill be struck out and the following substituted therefore:

"(2) For the purposes of this act, when a member or senior public servant is acting in a quasi-judicial capacity, a member or senior public servant has an apparent conflict of interest when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict exists."

M. Eves propose que le paragraphe 2(2) du projet de loi soit remplacé par ce qui suit:

«(2) Pour l'application de la présente loi, lorsque le membre ou le fonctionnaire supérieur agit dans une capacité quasi-judiciaire, le membre ou le fonctionnaire supérieur a un conflit apparent d'intérêts lorsqu'il y a appréhension, les personnes raisonnablement renseignées craignent, qu'un conflit existe.»

Mr. Eves: The reason for these amendments to section 2, as we stated last week, is to include senior public servants in the act. We realize that the chair may or may not accept that amendment to this piece of legislation. Also, we have changed the wording with respect to private interest to include that of the member's spouse and/or minor child. We have also added in the definition of "apparent conflict of interest." We have taken it word for word from the Parker commission as Mr. Justice Parker defined "real conflict of

interest" in one definition and "apparent conflict of interest" in another. We think it is important that both be addressed in this piece of legislation.

Hon. Mr. Scott: I wonder if I can bring to the honourable member one point that legislative counsel may clarify. I think our position with respect to senior public servant and quasi-judicial functions has been made known. The addition of the words "or that of his or her own spouse or minor child," I think perhaps have the unintended effect of reducing the scope of the bill.

I made plain the other day, and I think legislative counsel will support this, that a private interest might include the interest of a member desiring to advance the interest of his brother or his sister, and that it would certainly include, by definition, spouse or minor child. If you add the words "or that of his or her own spouse or minor child," I think therefore the effect is to reduce the kind of private interest that can be looked at under this definition. It may be that legislative counsel has some comment to make about that because I do not understand that was the intention. The headline would say, "Conservatives Support Narrow Bill."

Mr. Breough: As opposed to Liberals supporting a wishy-washy bill.

Mr. Chairman: I do not know if legislative counsel has any comment. Do you want to comment on that?

Ms. Schuh: As far as the intention of the motion goes, I suppose Mr. Eves will want to explain it. I agree with the Attorney General (Mr. Scott) that adding those details about spouse and minor child certainly makes the broad interpretation the Attorney General has been giving us impossible. It would have that narrowing effect.

Mr. Chairman: Maybe what the chair should do now is rule on the admissibility of the amendment.

Mr. Sterling: The only thing I would say is that with respect to the present commissioner, it is obvious from his response with regard to the opinion I asked for in anticipation of this act that he does not have a clear understanding of what a private interest is or is not.

Mr. Cordiano: I would correct him.

Mr. Sterling: That is my conclusion from--could I continue just for a minute? If you read the letter and you look at the definition section, section 1, which we will look at later, it is very difficult to know what the limits or the narrowness of the words "private interest" is. The commissioner said he would not even attempt to try to define what that is and then draw a conclusion after that matter. I think he defined it in a very narrow sense without looking at apparent conflict, which is the subject of the second part of our amendment to this section.

That is why we have added those particular words to the final part of subsection 1 of our amendment, but we are quite willing to look at a more definitive definition of what a private interest is because we do not think the existing section, along with the part of section 1 of the existing bill, is definitive enough.

Mr. Cordiano: I think it is pretty clear what the acting commissioner stated with respect to private interest. I think it is pretty

clear in the act. It clearly defines what private interest is not, which makes the entire section broad enough that it includes everything that it is. It says what it is not. I think that is what was how the commissioner responded, that he could not tell you what it is, but he could tell you what it is not. Therefore, that is left in a very broad sense to the commissioner's interpretation. I think that is the intention here. Correct me if I am wrong, Attorney General.

Hon. Mr. Scott: That is certainly the intention. I can tell you that when we get back to the definitions, I am going to try to respond to a concern that Mr. Breaugh had that the definition of private interest might allow the commissioner to find that a direct pecuniary interest was not a private interest. I regard that as quite unlikely, and legislative counsel may have something to say about it, but in an effort to meet that, we would look at something when we came to the definition of private interest, like "private interest includes a pecuniary interest, but does not include an interest in A, B and C."

The point of private interest, on which I thought everybody agreed, was that while at the margins it may be difficult to tell how far it extends, it clearly extends to advancing not only your own interest, but the interests of those persons who are not members of the public in the general sense because of their connection with you. To advance the interest of a previous partner in my law firm or the interest of my brother or sister would be to advance a private interest, when I should be taking the interest of my constituency or the general public first.

I think the only point I make, and it appears again later on in sections 3 or 4, is that this language or that of his or her own spouse or minor child reduces that possibility.

Mr. Eves: It would be helpful if the Attorney General would have indicated on Thursday what changes he and the government are prepared to make with respect to being more definitive and what is included or not included in the term "private interest." As we stated last week, and we state again, we are not hung up on our own particular wording. We are just attempting to try to tie down the definition of private interest more exactly.

I suppose one could accept the argument that if his or her own private interest has a meaning, to say his or her own private interest or the private interest of his or her own spouse or their minor child encompasses three times the number of people in theory that his or her own private interest would include, if you wanted to take that to its logical extreme, but as I said, we are not hung up on wording. What we would like to get is a more definitive outline of what private interest is meant to include, because I think it is clear, as has been stated by my colleague Mr. Sterling, that the acting commissioner himself is of some concern as to what private interest would or would not include.

Hon. Mr. Scott: I tried to do this on Wednesday and I may have failed. First of all, every interest that a member has is encapsulated either in the phrases "public interest" or "private interest." There are only two kinds of interests under this statute, public interests and private interests. Their ambit will be defined by the commissioner in relation one to the other. As I said on Wednesday, I believe a private interest to be not only a pecuniary interest but a pecuniary interest of someone who is privately connected to the member and who is not simply a member of the general public.

For me to advance the pecuniary interest of my brother would be to advance a private interest; in the sense, that would not be a public interest determination.

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At the margins there is going to be unquestionably room for argument about whether private interest extends to advancing the interest of a class of people who include your 32nd cousin twice removed, but the ambit of this definition was broad enough to include all that. The members asked, for example, whether it would include the interest of one's mistress or one's same-sex companion. I said yes, it would, because to advance those interests, just as the interest of your brother, your sister or your grandmother, would not be to advance the public interest.

It does not seem to me it is going to be possible, without running the risk of underdefining the section, to try to spell out those relationships, because they go well beyond blood and sexual relationships to business relationships. To advance the interests of one's former partner in a law practice would be to advance a private interest, in my opinion.

Mr. McClelland: I am just getting the sense that Mr. Eves and Mr. Sterling have sought to marshal the support of the interim commissioner. I think it is also important to note that the commissioner says, "I do not believe that it is either necessary or prudent to attempt to give an exhaustive definition of what constitutes a private interest and so on."

I think it is important to bear in mind that if Mr. Eves would want to marshal the support of the interim commissioner, we should look at that. I think the Attorney General has said precisely the same thing in his comments just concluded.

Mr. Chairman: Let us proceed then. With regard to a ruling on the senior public servant aspect, I would like to rule on the admissibility of the Conservative amendments, which propose to add the term "senior public servant" to the bill.

The scope or purpose of the bill, as set out in the explanatory notes, is to codify the conduct of members of the assembly and of the executive council that constitutes abuses of office. The conduct of members of the assembly and of the executive council may be affected by the interests of persons whom a member may be tempted to benefit. Therefore, the bill requires that the interests of spouses, etc., be disclosed.

The amendments proposing to make senior public servants subject to the provisions of the bill are clearly beyond the scope or purpose of the bill and are therefore out of order.

Mr. Eves: As we indicated last week, we quite anticipated that might well be your ruling.

Mr. Chairman: I do not know where you ever got that idea, Mr. Eves.

Mr. Eves: I would appreciate some sort of statement or comment from the Attorney General with respect to the government's intention to tighten up the definition of conflict of service under the Public Service Act or its regulations. Members of this committee discussed last week what conflict-of-interest provisions there are now under the regulations in the

Public Service Act, and to say they are rather loose and vague would be probably the understatement of the century. I would appreciate hearing from the Attorney General what the government's intention is in that regard.

Mr. Chairman: Before the Attorney General responds to that request, Mr. Breaugh has a comment, and then maybe he can respond to both together.

Mr. Breaugh: I am uncomfortable with your ruling, to put it as politely as I can. It is quite one thing for the members of the government to say they do not like an amendment and to vote it down, to argue against it and to use their majority in a parliamentary sense to say no. Everyone understands that.

What I have a little problem with is that my reading of the bill is somewhat different, I suppose, to yours. I see several people other than members named in this bill.

I will tell you I am not enthralled with this amendment, but I think they have a point. I get the real sense there is going to be a whole lot of the Attorney General saying: "We are considering that in another way. We have that before a committee of cabinet."

Can you imagine? The Attorney General said today that cabinet does not want to do things by means of regulation. Give me a break. I find that a rather distasteful way to proceed. To make an argument that in some way it is procedurally incorrect for the Conservatives to move this amendment is quite nonsensical, I believe.

You may accept or reject their political argument that this is not a good thing to do, but I think if you let this stand--here is my problem with it: not being a great fan of the amendment, I really do not care a great deal one way or the other, so I am not going to challenge your ruling on the matter--I sense we are getting to the point where it is going to be illegal, immoral and not proper for opposition members to move any amendments around here.

Mr. Cordiano: That is stretching it a bit far.

Mr. Breaugh: It may be stretching it a bit, but--

Mr. Cordiano: I know you are a reasonable man, but do not stretch the limits.

Mr. Breaugh: All right. Then let me make the argument, if you want to get beyond reasonable. I do not know if it is worth bothering with, quite frankly, to rule this particular amendment out of order. I am not convinced it is out of order, but I am getting somewhat concerned that in the House, just before we adjourned, an amendment was put and, because it might cause the expenditure of money, it was ruled out of order. I cannot think of anything you can do that would not cause the expenditure of money in some way. If it causes the bill to be printed, it causes an expenditure of money.

I want to express my sadness at the ruling of the chair this morning to throw this one out, for starters, particularly when I thought there was lots of advance notice being given that the amendment was not sacred and that there would be other ways to write it. I am somewhat concerned that we will now proceed with a conflict-of-interest bill in which senior public servants are excluded.

The hope is that somehow the government will, by regulation probably, rewrite and redefine what a senior public servant is. I am as aware as anybody around here that, although it seems on the surface a rather simplistic notion that they would all be covered under the Public Service Act, they are not and we know that.

There are all different kinds of people working in and around the ministry offices, most of whom are civil servants in an acknowledged legal sense, many of whom are not. There are full-time and part-time and part-time full-time, and full-time part-time and occasionals, and all kinds of classifications employed in the offices of the various ministers, so I do not think we are doing anybody any great service here this morning, which is my ultimate problem with this.

You have ruled it out of order and we will let that stand, but I will watch with great care how many times amendments are getting ruled out of order here. I am not sure we do anybody any good by getting very sticky on that point. If you do not like it, the government does have a majority and it can vote against it. But I point this out to you, by ruling amendments such as this out of order, you are going to force us to be somewhat more devious, I suppose, in a parliamentary sense, which we can be.

Mr. Chairman: Heaven forbid. How could you ever be that?

Mr. Breaugh: I would point out that if you had not ruled it out of order, we might even have had our debate and our vote on the matter by now.

Mr. Cordiano: I suppose that is the chairman's ruling.

I just want to respond to what Mr. Breaugh has said. I want to make the point that there is a fundamental difference here, in broadening this section to senior public servants, and I think that is what we are arguing here. Let us keep our nose on the focus.

Mr. Breaugh: Are we broadening or narrowing? Let us get our script together here, boys.

Mr. Cordiano: You are expanding the number of people--

Mr. Breaugh: No, the Attorney General says we are narrowing.

Mr. Cordiano: No, you are not. I am talking about the definition and who it covers under conflict of interest. You are bringing in more people and I think that broadens the scope of the bill. That is the point that is fundamental here and I think the chairman's ruling is correct on that, quite frankly. I got my two cents in there, Mr. Chairman. Thank you very much for allowing me to say that.

1110

Mr. Sterling: The problem here is that this whole bill was set up originally for people who were appointed by the Premier of the province to undertake tasks for him. It was the cabinet we were concerned about. That is where the conflicts came and showed up. In response, we have a Members' Conflict of Interest Act.

The Premier appoints a number of people in various different categories. One of the groups he does appoint are the deputy ministers of his government.

They are political appointees. One might argue that they are civil servants, public or civil servants, etc. Nothing could be further from the truth in terms of their removal or their demotion or whatever. They are responsible to the Premier of the province.

Secondly, in terms of actual raw power and the problem of getting into a conflict, probably the deputies have more power than the ministers themselves because of their knowledge of the particular guts of the ministry. Therefore, the dodge by the Attorney General in terms of avoiding the amendment and people can argue, as they have done, it appears, successfully with this present Speaker and the new Clerk of the House, that anything that touches the financial aspect is out of order as well. It does not bring to the fore a legitimate debate on the issue.

Therefore, in terms of dealing with senior public servants, we would be willing to talk about which public servants would be included or not included, but what we are after are the people who are appointed by the Premier to positions of power and who are, therefore, in some way politically responsible. We feel that deputy ministers in particular are within that category.

Therefore, I express displeasure, as the member for Oshawa has, with the strict ruling that you have come down with, Mr. Chairman. I would have hoped the Attorney General would have allowed debate on the merits of the issue.

Hon. Mr. Scott: I do not have any view on the ruling and if the committee wants to overturn it and have a debate about whether public servants should be included, that is not going to bother me one way or the other.

Mr. Chairman: I have not taken any instructions from the Attorney General, nor has he offered any, let that be clear.

Mr. Johnson and then Mr. Philip.

Mr. J. M. Johnson: Having missed the great debate last week, I am at a loss to know what really transpired, but speaking on behalf of my constituents and the people out in the real world, I have a little concern. I have been a member for over 12 years and I was trying to recall the last time I had the opportunity to be in conflict. I do not think a member ordinarily does have this opportunity, but yet--

Mr. Chairman: I am not sure people seek it.

Mr. J. M. Johnson: --I would assume that deputy ministers per se have the opportunity quite often and they may or may not exercise it. I do think if we are trying to draft legislation that protects the public, and I think that is the intent--Bill 1 is supposed to be one of the most important bills of the government--surely it is just common sense that we should want to protect the interests all the way, not just for the members but also for the civil servants, the people who do have the power to make the decision.

To me it is quite a logical recommendation, amendment, suggestion and if the Attorney General has some way of dealing with it, other than through this amendment, then perhaps he should present it.

Mr. Philip: Mr. Chairman, before you rule that this somehow expands the bill, I suggest you re-read the Hansard of the Attorney General's comment on what is included in his understanding of private interest, because he

clearly stated that all of these are included or would be included under "a private interest" of the particular cabinet minister.

Mr. Chairman: Let me make it clear. I have ruled with regard to that.

Mr. Philip: Let me then suggest to you, Mr. Chairman, that your ruling is inconsistent with what has already been discussed and defined by the Attorney General. All this does is it does not expand it, it simply clarifies it.

Mr. Breaugh: Snatching defeat from the jaws of victory.

Mr. Chairman: Order. The chair has made a ruling with regard to this. Shall we proceed?

Mr. Breaugh: What did you rule?

Mr. Chairman: I ruled that the amendments by the Conservatives with regard to senior public servants are out of order.

Mr. Breaugh: Your ruling is that the amendment on subsection 2(1) and subsection 2(2) are both out of order?

Mr. Chairman: That is correct.

Mr. Breaugh: So you did not even allow them to divide it. You just crunched them before they even got their wheels in motion.

Interjection.

Mr. Breaugh: That kind of slander and slur to their position is fine by me.

Mr. Chairman: OK. Are there any other amendments with regard to section 2?

Mr. Sterling: Mr. Chairman, since "a member or senior public servant" is not satisfactory, I wonder if the committee would give unanimous consent to considering restricting it: instead of the words "senior public servant," say "a deputy minister."

Mr. Cordiano: I would argue that it is the same thing. You are just trying to broaden the scope of the bill, and that is the point here. It is a fundamental difference.

Mr. Sterling: We are trying to broaden the scope of the bill?

Mr. Cordiano: That is right. Obviously, the chairman's ruling is that it broadens the scope of the bill and it is out of order.

Mr. Sterling: We can do anything by unanimous consent, Mr. Cordiano.

Mr. Cordiano: Right, but you are not going to have unanimous consent, because I say it is a fundamental difference. I would agree with you if it were not a fundamental difference and you were not trying to change the scope of the bill, but that is where I think we have to disagree.

Mr. Breaugh: I would certainly concur to give unanimous consent to discuss the matter. I do not think that would be a problem at all. I think they have brought forward a valid concern that the committee has to deal with in some way. It goes back to what we just argued about. What is wrong with having that discussion to see if we can find some common ground here or a way to deal with the matter? Surely it cannot be wrong to allow the committee to discuss the matter.

Mr. Chairman: If people want to discuss, then of course they have the right to discuss, if they want to discuss just for the sake of discussing it. But the chair has made a ruling with regard to that, and I am afraid that if you were going to try to use the term "deputy minister" or something in place of "senior public servant," then the scope that you are trying to broaden is the same and therefore it would be ruled out of order again. If you want to discuss it for the sake of discussing it academically, there can be a lot of benefit to it. But from the standpoint of expediting the bill itself, the progress here, I am not sure you would accomplish anything.

Mrs. Sullivan: It seemed to me that, indeed, we had discussed this last week in a fairly full manner, although without describing the specifics of areas of conflict that the public service may have to consider. Mr. Eves at that time indicated that the purpose in putting forward this kind of amendment was to raise the profile of the problem, and it was determined at that time that the Civil Service Commission is right now reviewing its act. Certainly, members at a point in time will have the opportunity to look at the conflict-of-interest questions in the context of the other act. I think we have had a pretty thorough discussion of this particular issue.

Mr. Eves: I made a comment a few moments ago and I am still waiting for a reply from the Attorney General as to what the government's intention is with respect to senior public servants. It is very fine and well to say, as was said last week, that the Civil Service Commission is looking into the matter. I would think if we are going through this exercise with respect to conflict-of-interest definition, various sections indicating what members can or cannot do, any piece of legislation or regulation that is brought forward for senior civil servants should be parallel to the legislation. Certainly, no lesser standard should be expected of senior public servants than is expected of some members of the Legislature.

1120

Hon. Mr. Scott: If I am being asked for our position, let me begin by saying that all the people who are described in the amendment, and perhaps others, are public servants. They may not be crown employees but they are public servants under the Public Service Act as are, I believe, legislative assistants to members.

When it comes to conflict of interest, it seems to me one wants to be sure that a public servant does not act in a conflict-of-interest position regardless of whether he is senior or junior. In other words, I envisage a situation in which a relatively junior public servant making decisions about the acquisition of land in the Ministry of Government Services might have what we would judge to be a conflict of interest, even though he would not be a deputy minister or within the category that is generally called a senior public servant. He would none the less be preferring a private interest over a public interest; therefore, the question of public servants and conflicts is a far-ranging one that extends not only to deputy ministers but also throughout the public service.

It is complicated by virtue of the fact that the mechanism that is available here to get the process going, which is public disclosure, is not required and could not reasonably be required for public servants under this bill. It simply would not work with respect to the thousands and thousands of public servants who are out there.

There is in the Public Service Act at present a mechanism by which their performance can be reviewed and by which, with very substantial protections as to arbitration, their contracts or their roles can be terminated upon showing that something has been done by them that is inappropriate. To simply add an amendment here, it seems to me, whether it is restricted to senior public servants or extends in the broader way the Conservatives originally proposed, is not going to grapple with the problem.

I should tell you that the Civil Service Commission is looking at a number of problems related to the rights and liabilities of public servants at present. One of them is the elaborate two-volume report that was brought forward by the Ontario Law Reform Commission. It has to do with political rights of those public servants and, in due course, there will be amendments proposed to the act designed to grapple in a more general way with this whole problem. I cannot tell you when or what form that will take because I am not the master of that decision, but it is being considered.

Mr. Chairman: I want to remind members that you do not need to press the buttons on your microphones to put the red light on. Just disregard that. It is done automatically from the table to my left.

Mr. Breagh: Thank you for that.

Mr. Chairman: I wanted to save your physical energy, Mr. Breagh.

Mr. Breagh: We are allowed to press buttons or not press buttons and we can talk. We just cannot move motions this morning.

Hon. Mr. Scott: The button is there, I understand, Mr. Breagh, for you to press if it gives you any pleasure to do so. Whether it has any consequences, I gather you are being told, is beside the point.

Mr. Chairman: That is right. It is not necessary to have those consequences.

On section 2:

Mr. Eves: I would like to propose an amendment to section 2 along the lines we just did, except not using the term "a senior public servant," extracting that.

Mr. Chairman: Mr. Eves moves that section 2 of the bill be struck out and the following substituted therefor:

"(1) For the purposes of this act, a member has a conflict of interest when he or she makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is an opportunity to further his or her own private interest or that of his or her own spouse or minor child.

"(2) For the purposes of this act, when a member is acting in a quasi-judicial capacity, a member has an apparent conflict of interest when

there is a reasonable apprehension, which reasonably well-informed persons could have, that a conflict exists."

Mr. Eves propose que l'article 2 du projet de loi soit remplacé par ce qui suit:

«2(1) Pour l'application de la présente loi, le membre a un conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses propres intérêts personnels ou ceux de son conjoint et son enfant mineur.

«(2) Pour l'application de la présente loi, lorsque le membre agit dans une capacité quasi-judiciaire, le membre a un conflit apparent d'intérêts lorsqu'il y a appréhension, les personnes raisonnablement renseignées craignent, qu'un conflit existe.»

Mr. Eves: I have already outlined our thought basis and argument on those amendments with respect to the previous section and I will not take up the time of the committee by reiterating that here.

Mr. Chairman: Thank you, Mr. Eves. The members have that amendment before them. Does anyone want to speak to it?

Mr. Breough: Before we waste a lot of time, are we going to be allowed to vote on this amendment?

Mr. Sterling: Could we vote on subsection 2(1) and then deal with 2(2)? I would like to speak to subsection 2(2) but not to 2(1).

Mr. Chairman: Does the committee wish to vote on it separately?

Mr. Cordiano: That is fine.

Mr. Chairman: Then there is no problem.

Mr. Breough: If the member wants to divide it, that is fine.

Mr. Chairman: Do you want to divide it, Mr. Eves?

Mr. Eves: That would be preferable, to divide it.

Mr. Chairman: To have it divided?

Mr. Eves: Right.

Mr. Chairman: We will divide it and we will vote on it separately.

Mr. Breough: We are in a little bit of an awkward position here. I would like to support this amendment, frankly, essentially along the lines that I believe part of what we have to do here is to get something that is clear, and I am less concerned that people would say it is broadening or narrowing. If it means that I have to narrow the scope of the definition of a conflict of interest to come up with something that is clear enough that we can understand it, I think we have done the job that is required of the committee, so I am quite prepared to put a clearer focus on what you mean by a conflict.

I do not believe it is essential that you get to kind of absolute terms here. I do not think you can. I am not really interested in that exercise, but I do want us, by the time we are through, to have something people can understand, which is clear enough, focused enough, so that they have some understanding of what is meant by the term "conflict of interest."

I believe, as we discussed earlier, that it basically falls into kind of three layers, if you like. One is, I am an advocate of the idea that you have to kind of spell it out, that there is a pecuniary interest slant to it that has to be spelled out. I think the government kind of accepts that, although I am not terribly sure this morning.

The second one would be something like this, and the third would be something like subsection 2(2) here, so I am accepting it as being something that is worth while thinking about and trying to put together. How the jigsaw pieces all fit together in the end is probably more important than anything we do in the interim, but I am expressing support for the amendment, kind of trying to get the thing put together in such a way that there are clear and reasonable definitions available. I believe it will come kind of in a layering effect, having to separate out categories which have to do with direct pecuniary interest, which have to do with this type of a conflict and which have to do with the conflict that is perhaps less serious but also has to be dealt with, which might be called "an apparent conflict."

Hon. Mr. Scott: In view of the fact that legislative counsel thinks this amendment to subsection 2(1) placed here has a narrowing effect and in the light of what I think the Conservatives intend and what Mr. Breaugh intends, it might be appropriate, if an amendment of this type is going to be made, that it be made to the definition section of "private interest," and it might be that the Conservatives would agree to postpone that question until we come to the definitions.

We already have Mr. Breaugh's concern on the definition that there should be some kind of deeming of pecuniary interest, and if you want to deem that the interest of a spouse and minor child is the interest of the member, it seems to me you would do that under subsection 2(1) rather than here. I just suggest that in an effort to be consensus oriented.

Mr. Eves: If legislative counsel would think that such an amendment would be appropriate or more appropriate in the definitions section, and indeed would be applicable and not be out of order trying to do by definition something you could do substantively, then I would certainly concur with the Attorney General's comment.

Ms. Schuh: I think I would need to study the matter a little bit. I am not exactly sure what changes to the definition the Attorney General is suggesting. Maybe we could discuss that before we get to the definition sections, which we will not do until the end.

1130

Mr. Chairman: Mr. Eves, I am prepared to proceed and go to section 3, if you wish, and leave section 2 open so that you would not close the door on us. The consultation could take place in the interim and then--

Hon. Mr. Scott: Mr. Chairman, could I respectfully suggest that I did not mean to say we would accept it if it was found in the definition because I think even in the definition it is going to be narrowing. If you

want to narrow it, fine; but I think it is going to be narrowing. I simply said it was appropriate there. If there is any doubt about that, perhaps the appropriate thing is to go ahead and have your vote on subsection 2(1).

Mr. Eves: My concern is not whether the government members of the committee would be supporting such a change in the definition or not. My concern is whether or not such a definition, purporting to redefine or add other things to a member's private interest, is going to be in order or out of order in the opinion of legislative counsel.

If it is going to be in order and is an appropriate and a legal and proper thing to do, then I would quite agree to stand down discussion about subsection 2(1) until we enter into that discussion with respect to definitions.

However, if it is legislative counsel's opinion that such an amendment would not be in order, then I think we may as well discuss it now and get it out of the way.

Mr. Chairman: Mr. Eves, I understand what you saying. I think legislative counsel would like to further study the matter. In the interest of expediting this matter, I am prepared to let us stand down section 2 for the time being so that we go on to section 3 and then come back to it later.

Mr. Eves: Could we deal with subsection 2(2)?

Mr. Chairman: Yes, we could deal with that, if you wish. But you may wish to stand the whole section down and then go on to section 3, because it is part of it.

Mr. Eves: For sections 3 and 4, we have similar amendments that have similar wording, so we would have to agree to stand those down as well.

Mr. Sterling: Mr. Chairman, I think in terms of our desire to look at section 1, we would have preferred to amend "private interest" in section 1, but we were concerned about the standing orders and the rules of the House as to whether we would be then attacked for trying to do in the definition section what we should have done somewhere else.

If the committee is agreeable to looking at the definition of "private interest" when we deal with section 1, that is fine and dandy by us.

Mr. Chairman: The alternative I have is, if you want a few minutes to consult with each other, I can just recess for five minutes and then we can come back. That might give us a chance to then proceed.

Mr. Eves: I would be agreeable to that, Mr. Chairman, if legislative counsel thinks that would be sufficient time for her to give us an answer. OK. That would be agreeable to us.

Mr. Chairman: Is that fine?

Mr. Eves: That is fine.

Mr. Chairman: Why do we not just recess for about five minutes?

Mr. Sterling: Wait. Can we not deal with subsection 2(2)?

Mr. Breaugh: No. Let us recess.

Mr. Chairman: We will come back at about 20 minutes to 12.

Mr. Sterling: OK.

The committee recessed at 11:35 a.m.

1145

On section 2:

Mr. Chairman: Let us proceed. I think what we should do is vote on these sections. Let us vote separately on subsection 2(1) and then subsection 2(2).

Mr. Morin: Subsection 2(1) of which?

Mr. Chairman: Subsection 2(1) and then subsection 2(2). We will vote separately.

Mr. Morin: Excuse me, "senior public servant"--leave that aside?

Hon. Mr. Scott: That is out. That has been withdrawn in the face of the ruling.

Mr. Breaugh: It has been ruled out of order.

Mr. Eves: That is fine. The chairman and I had a brief discussion during the break. Because of the fact that we have numerous other proposed amendments with the same wording, we may as well deal with this one amendment once and for all, get it out of the way, and then we do not have to worry about the rest of the sections as we go through the bill and we will not have to hold it up.

Mr. Chairman: Shall we vote on subsection 2(1)?

Mr. Breaugh: No, I think we ought to vote on the amendment to that section as proposed by Mr. Eves.

Mr. Chairman: Yes, on the amendment. That is correct. That is what we are talking about.

Motion negatived.

La motion est rejetée.

Mr. Chairman: Now to the amendment to subsection 2(2), "For the purposes of this act, when a member is acting in a quasi-judicial capacity, a member has an apparent conflict of interest when there is a reasonable apprehension, which reasonably well-informed persons could have, that a conflict exists."

Motion negatived.

La motion est rejetée.

Section 2 agreed to.

Mr. Breaugh: I am going to ask for 20 minutes to call in my other member.

Mr. Chairman: On what now?

Mr. Breaugh: Section 2.

Mr. Chairman: I thought we just had a vote on it.

Mr. Breaugh: Yes. Just to refresh your memory, we usually take the votes verbally, and if a member of the committee requests 20 minutes to call in and ask for a recorded vote--

Mr. Chairman: Yes, I am aware of that. I just think you are somewhat late in doing it. Nevertheless, we will have a 20-minute recess.

Mr. Breaugh: Yes, we will.

Mr. Polsinelli: May I make another suggestion?

Mr. Chairman: Yes.

Mr. Polsinelli: Since it is about 10 to 12, why do we not adjourn for lunch and take the vote at two o'clock when we resume this afternoon?

Mr. Breaugh: That would be an agreeable way to proceed.

Hon. Mr. Scott: At this rate, February will be too early.

Mr. Chairman: The other thing we could do is go on to another section, get your member in, and we can vote on this while you are getting him.

Hon. Mr. Scott: He will probably need him for that section.

Mr. Breaugh: It would be hard for me to vote on that section while I am out getting my other member in.

Mr. Chairman: I know. We would not be voting on it.

Mr. Breaugh: Who do you think you are--Bob Callahan? Give me a break.

Perhaps you would like to break for lunch now and have this recorded vote at two o'clock.

Mr. Chairman: So you would be here with your two members at two o'clock.

Mr. Breaugh: I will be happy to do that, but we have only one other member, so the two of us will vote.

Hon. Mr. Scott: We are counting you as one. It is foolish, but we are.

Mr. Chairman: I thought you were one of the members, but maybe you are not. OK, let us recess until two o'clock.

The committee recessed at 11:49 a.m.

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Public

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
MEMBERS' CONFLICT OF INTEREST ACT
MONDAY, JANUARY 18, 1988
Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)

VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Faubert, Frank (Scarborough-Ellesmere L)

Johnson, Jack (Wellington PC)

McClelland, Carman (Brampton North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Sullivan, Barbara (Halton Centre L)

Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. Sterling

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Klein, Susan, Legislative Counsel

Witness:

From the Ministry of the Attorney General:

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, January 18, 1988

The committee met at 2:20 p.m. in room 230.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

On section 2:

Mr. Chairman: I call this committee meeting to order. Before we left, we had decided that we would have a vote as soon as we came back. Mr. Breaugh, was this a recorded vote you wanted?

Mr. Breaugh: Yes.

Mr. Chairman: A recorded vote then. We are voting on section 2 of the act.

Mr. Morin: Subsection 1?

Mr. Chairman: No. Section 2.

The committee divided on whether section 2 should stand as part of the bill, which was agreed to on the following vote:

La motion de l'inclusion de l'article 2 dans le projet de loi, mise aux voix, est adoptée:

Ayes

Cordiano, Faubert, McClelland, Morin, Polsinelli, Mrs. Sullivan.

Nays

Breaugh, Eves, Johnson, J. M., Philip.

Ayes 6; nays 4.

Pour 6; contre 4.

Section 2 agreed to.

L'article 2 est adopté.

On section 3:

Mr. Eves: In the light of the committee's vote on subsection 2(1), the amendment that we proposed, which was defeated, I do not see any point in belabouring this point. Our only amendment to both section 3 and section 4 was to add, after "his or her own private interest," the words "or that of his or her own spouse or minor child." I think it is on the record what our point was, and I will not be moving amendments to either sections 3 or 4 because they have already been defeated in section 2.

Mr. Chairman: Thank you, Mr. Eves. The chair appreciates the co-operation.

Mr. Breaugh: Either one of your amendments? You had two amendments that were similar; one used the words "public servants" and one did not.

Mr. Eves: I may as well clarify this right now as well. Any of our previous amendments that had the words "senior public servants," we will not be moving because the chair has ruled them out of order, and we accept your ruling, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Eves.

Mr. Breaugh: Are you putting forward, for example, the amendment on section 3 on insider information, which does not use the words "senior public servants"?

Mr. Eves: No. That is what I am commenting on now. I will not be moving that amendment or the similar amendment to section 4 dealing with influence, because the only change really was "or that of his or her own spouse or minor child," and the amendment we moved in subsection 2(1) has also been defeated. I do not see any point in utilizing more of the committee's time talking about the same thing and defeating it again.

Section 3 agreed to.

L'article 3 est adopté.

Mr. Chairman: That section is carried--unanimously, I might say.

Mr. Breaugh: If you're going to rub it in, maybe we could have some more votes.

On section 4:

Mr. Chairman: Is there any discussion? Shall we have a vote on section 4?

Mr. Breaugh: Don't go looking for trouble. We are trying to facilitate things.

Section 4 agreed to.

L'article 4 est adopté.

Hon. Mr. Scott: Mr. Chairman, last week when we were talking about the dividing line between public interest and private interest, it was suggested by some of the members that there was some risk in their mind that a

private interest might be thought to include what members normally do on behalf of constituents.

We have a motion, though it has not been circulated, which would normally go sort of here if you were going to make the act look literate, which simply provides, "This act does not prohibit the activities in which members normally engage on behalf of their constituents."

We would be prepared to ask someone to move that. I should say frankly to you that I do not think it changes anything in the bill, but it may make the point the members wanted to make more clearly than it is made in the bill. I simply add that if you have been doing something on behalf of your constituents that is to advance your private interests, it goes without saying that even with this amendment, you will not be able to do it. But if the committee wants that amendment, I would be happy to ask one of my colleagues if he wants to move it, at least for discussion purposes.

Mr. Polsinelli: I am very happy with this amendment.

Mr. Chairman: Mr. Polsinelli moves that the bill be amended by adding thereto the following section:

"4a. This act does not prohibit the activities in which members normally engage on behalf of their constituents."

M. Polsinelli propose que le projet de loi soit modifié par adjonction de l'article suivant:

«4a. La présente loi n'interdit pas les activités qu'exercent normalement les membres pour le compte de leurs électeurs.»

Hon. Mr. Scott: Would the committee like copies made of this before we discuss it?

Mr. Breaugh: I do not see any great problem with it, but I do agree with the idea that something should be inserted in the bill at this point if only to keep out frivolous accusations that somebody acted on behalf of a constituent in a way that was improper. I am a little interested in the wording of it as I heard it. It seems to me to be pretty much what you want. I think it is more important than anything else that some notation be made here that this does not preclude somebody arguing a case before a compensation board, a housing authority or whatever.

I am more concerned that there be something inserted here that would clarify what is the obligation on the part of the member to do something. Conversely, I am aware that in some other instances an argument has emerged which says, "I cannot do something as a member because I am precluded by an act such as this." I tend to think that should be clarified.

I will beg your indulgence a bit more. I am not sure we want to do it in this bill, but I have heard from some other members that there is a little bit of a grey area emerging about the member's role as an advocate for various groups and whether there is any need to recognize that. It seems to me this kind of clause puts the nail to that argument. All I want is something which says that what you would normally do representing your constituency is appropriate and that no one can really question, under this act, any actions a member would take in that regard. There may be other occasions when somebody says it is politically stupid to do it, or immoral and unjust and all that kind of stuff. I think the wording, as I heard it, solves my problem.

Hon. Mr. Scott: Before Mr. Eves begins, we have some sort of similar amendments, which we have not copied yet either but we will try to get them copied, that deal with the role of a former cabinet member who remains in the Legislature but would not be able to lobby for a contract. It is designed to enable him to do what other members normally do; that is, lobby for contracts for low-cost housing in his ridings or what have you, even though he is as a former cabinet minister. They will be coming up. I do not ask the committee to approve it now but I thought I should bring it to your attention.

For example, at the moment a private member has the right to go to the cabinet or a cabinet minister and say: "I have an applicant for a low-cost housing grant in my constituency. He is the right kind of person. It is the right kind of housing. We need it desperately. Will you do what you can to get it?" Our ministers always do, of course.

If you look at sections 6 and 17, there may arguably be some restriction on a former cabinet minister who is still in the Legislature to do that because he is not entitled to lobby, in quotes, for 12 months following the cabinet. I take it that while there would be some restriction, it is not the intention of the committee to deprive that person of the normal lobbying entitlements of a member simply because he was in the cabinet for a while.

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Mr. Breaugh: If I could respond to that, I would say no, except that--again, it goes back to the registration of a lobbyist in some way. I am trying to draw the line in my own mind. I think it would be quite proper for any member to go to a member of the cabinet and say, "It is in the best interests of my constituents to have this contract awarded," or whatever.

The difficulty I have is that if the former cabinet member, for example, was a lawyer and took on this builder or contractor as a client, I do not think it is appropriate for him to then go to the minister and either say directly or, worse yet, not say that he is representing a client, that it is a business relationship and that he wants his client to get the contract. That is where I have the difficulty.

We will go back to this again, I suppose, through the bill. When you make these distinctions among the members, it becomes very difficult because it means that as long as I do not enter into a business relationship with somebody, I can go and lobby the cabinet.

Hon. Mr. Scott: But that, you see, is the virtue of the concept of private versus public interest, because there would be no question in my mind, and I hope none in the commissioner's mind, that if a member of the Legislature, who had been retained on those days when he was entitled to practise law by a construction company, went to a cabinet member to advance the desirability of getting a contract for that construction company, he would be advancing a private interest and that is verboten.

The problem here is, let us leave out the client situation and deal simply with a former member of cabinet who becomes an ordinary member because he is out of cabinet and who seeks to say he wants to get a housing contract let, he does not care to whom, in his constituency. He should be able to do that.

Mrs. Sullivan: The particular situation Mr. Breaugh mentioned about a lawyer who would be putting forward a proposal on behalf of a constituent is

really already covered under section 40 of the Legislative Assembly Act, which precludes members from receiving a fee for putting forward, or providing advice, or promoting the interests in a situation where they are being paid.

On the amendment that Mr. Scott has put forward, I wonder if we could just for a second talk about whether the last words, "on behalf of their constituents," would include a broader constituency than people who were within the boundaries of a constituency? Is "constituents" a broad word or a limiting word?

Hon. Mr. Scott: It is intended to be broader than that example and, I think, has the effect in precise language of being broader, because what it protects is the normal activities of members. How do you judge what the normal activities are? You judge that they are normal activities because they are the things members do on behalf of their constituents. If you were to perform the same kind of service for someone who was not your constituent and lived in another area, I think you would be fully protected under the same section.

For example, many members may take upon themselves constituency requests that come from adjoining constituencies or elsewhere in the province where their party does not have a member. It seems to me it is perfectly proper that they should do so. At the risk of attracting the ire of the person who is the member, they are perfectly at liberty to do that. What are they doing? They are providing the kind of service that would normally be provided to constituents by a member and that would be protected under section 4a.

Mr. Philip: Are you saying that if you are advocating on behalf of a member, you need not have to live in your own riding?

Hon. Mr. Scott: You do not have to live--

Mrs. Sullivan: I was particularly interested in whether, for instance, if the advocacy were being done on behalf of an organization, whether it is the Ontario Nurses' Association, a trade union, or whatever, that could still legitimately be covered under the word "constituents."

Hon. Mr. Scott: I think it clearly could. The only exception would be if there was something in the nature of a private interest, that is to say, if you were a paid lawyer for that person.

Mr. J. M. Johnson: I have a question for clarification to the Attorney General. For example, if a member has a nursing home in his riding and the nursing home wants to expand and the member lobbies on behalf of the nursing home to the Minister of Health for extra beds, would that be considered a conflict?

Hon. Mr. Scott: It was never intended to treat that as a conflict, because you would be exercising a public interest, not a private interest. This foray makes that perfectly clear if there was any doubt before.

I have to tell you that it might be different if you were a paid consultant in your spare time to that nursing home. Then I think it would appropriately be said that advancing the case of that nursing home for more beds when you were at the same time a paid consultant to it would not be a function of your public duty as a member but would probably be judged to be a private interest because your success would be achieved and go with the compensation you were getting.

Mr. J. M. Johnson: Further on that, what if that nursing home made a contribution to an election campaign?

Hon. Mr. Scott: Well, the first thing is that the contribution to the election campaign, as it is now, would have to be made public, assuming you got a big enough one, and your electors at the end of the day would judge whether you were perceived to be performing a constituency function or were exhibiting gratitude for getting some contribution, but that happens to us all the time when we get contributions.

The alternative would be to invite people to make contributions to our electoral campaigns and to explain that, that having been done, we would not be able to do anything for them for the next four years, and I do not think that is what is intended.

Mr. Breaugh: A typical Liberal response.

Hon. Mr. Scott: What is intended, and I am sure what you intend as my member, is that you will serve those people on a daily basis, unmoved by the fact that they made a financial contribution. You would not serve someone less because he did not contribute and, in the same sense, you would not serve someone more--that is, by advancing what you thought was a bad case--because he had made a contribution.

Mr. J. M. Johnson: Just further on that, I have tried to make it a point personally not to be too concerned about who does contribute to my campaign. Am I in any way in conflict by not disclosing that? It is public knowledge anyway.

Hon. Mr. Scott: This bill, as I understand it, has nothing to do with what you disclose in the way of campaign contributions. It has to do only with what you disclose by way of income. If you were in receipt of income from someone who lived in your constituency, you have to disclose that; but campaign contributions are dealt with under another law and have nothing to do with this, really.

Mr. Chairman: We now have the amendment before us. Mr. Polsinelli has made the amendment. Mr. Breaugh wants to speak to it.

Mr. Breaugh: I just want to get on the record a couple of things that I think are worth noting. First of all, this wording is acceptable if we accept the traditional definition of "constituents" in the broadest sense. A number of us would, for example, represent various causes having to do with people who do not live in my riding, but I consider them to be the broader constituency. As long as that definition of the word "constituents" is acceptable, I have no problem with that.

The other thing I think we do need to clarify a bit is what we have just been pursuing somewhat here. I do not wish subsequently to have somebody get the statements made by the Commission on Election Finances on various campaigns and begin to say, "Well, here is somebody who made a donation to a particular member's campaign, here is where that member lobbied for something subsequently, and that constitutes a private interest." So I would like to see fairly clearly on the record that the two are--

Hon. Mr. Scott: I do not think there is any question about that. The contribution to a campaign, as I read that act, is not a contribution to the member; it is to a campaign committee, which simply puts forward the member as

its candidate. Indeed, there are cases that indicate that if the member takes the contribution and uses it for his personal purposes, such as to pay down his mortgage, he will have committed an offence--

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Mr. Chairman: I would hope so.

Hon. Mr. Scott:--desirable though the orderly paydown of one's mortgage may normally be. But what I am sure Mr. Breaugh understands is that it has long been an appropriate political question to assert of somebody, "You took a campaign contribution from a developer or a trade union"--in my party, we get contributions from neither--"and therefore all your votes in the succeeding four years are coloured by the fact that you took that campaign contribution, or your committee took it."

That has gone on for years and will continue to go on, and this act, as I understand it, has nothing to do with it. What this act would have to do with is if you received income from such a person or organization. If you did, you would have to declare it, and if you acted for the person from whom you received income, you would run the risk that the commissioner would find that in so acting you were advancing a private interest.

Mr. Breaugh: That is the next step in the process. I have no interest in entertaining allegations that somebody gave Ian Scott a \$100 honorarium to speak to an annual dinner and, flowing from that, that it constitutes income and you would have a conflict of interest after that.

I am a little bit concerned, however, since you rejected the indication that we wanted to include a lobby registration in the bill. If we do not get something like that which codifies and says: "This is what we mean by lobbying in a business, professional sense. Here is the list of those who are registered as lobbyists. If they are on that list, then we know that is clearly a business proposition and we deal with it in that way. If they are not on that list, we disregard that," if we do not do something like that, I am somewhat concerned.

For example, to reach back in history and give you a personal thing, I have been invited by the auto workers to speak to their conferences at various places throughout North America.

Hon. Mr. Scott: Right. What stopped you?

Mr. Breaugh: It may strike you as strange, but it is conceivable that someone could make an argument that there was, under this type of legislation, a conflict because there would be what some could construe as a benefit, that is to say, they provided me with transportation and accommodation. I do not recall that they ever gave me honorariums or anything like that, but we are getting to the point where someone could make the allegation that there is a benefit accrued and that I represented them subsequently.

I just want to get on the record that this is not what we mean and this is not what this act is all about.

Mr. Polsinelli: You would have to disclose that.

Mr. Breaugh: I have no problem with the disclosure part of it.

Hon. Mr. Scott: I understand that when we get back to the definitions, which are designed to exclude from "private interest" certain things that members are concerned about, Mr. Polsinelli has an amendment which is going to exclude from "private interest" sort of minimal things. I would have thought that if there was any doubt, that case would be taken care of.

The practical difficulty, however, is this: Let us assume that you were on the payroll of the United Auto Workers because of your highly vaunted speechmaking abilities--and it would be an odd choice, but I can understand the possibility--and you were in receipt of \$100 a week from them regularly. That would be income. I think it might well be said at that stage, just as if you were in receipt of \$100 a week from a drug company, that in advancing the interests of the automobile workers you were at that stage advancing a private interest. They were your clients in the nonlegal sense.

It is a big distance from there to the receipt of an honorarium or a speaking fee or a speaking disbursement, transportation and so on. While you would be obliged to disclose that as income, I do not think it would be concluded that because you spoke once a year to the auto workers that advancing their cause was advancing your own interest. It is a question of judgement.

Mr. Breaugh: In the British Parliament this is not a strange animal at all; this is quite a common practice. The Brits refer to this as being a sponsored member. Because it is the practice there to keep members' salaries very low, it is common practice that people will be sponsored by a trade union, a trade union local, a company in the private sector, a law firm. All kinds of groups sponsor members and it is income on a regular basis. In most instances, they give them an annual stipend but in some cases kind of almost a weekly paycheque, and it is not seen there to be in any sense a conflict. It is fairly common knowledge. I believe there is a disclosure record kept. They use that technique. We do not have quite exactly similar situations here.

Hon. Mr. Scott: Am I given to understand that that is happening here and I am the only person who has not found a sponsor?

Interjection.

Mr. Chairman: You and the chairman, because I have not found a sponsor, either.

Mr. Breaugh: There is a reason for that. We will not go into that.

Mr. Chairman: Meanwhile, we do have an amendment before us. If there is no further discussion--oh, Mrs. Sullivan.

Mrs. Sullivan: I just wondered if striking out the word "their" from the amendment broadens the concept of constituents being outside of the boundaries of the riding.

Hon. Mr. Scott: Perhaps it does. I have no difficulty with that. If Mr. Polsinelli would like to withdraw the word "their" from the amendment--

Mr. Polsinelli: I have no problem with that, Mr. Chairman. I will withdraw the word "their" from the amendment.

Mr. Eves: I would concur with that point. Also, just as a matter of clarification, will this section be an entirely new section in the act or will it be part of section 4?

Hon. Mr. Scott: I think it will be a new section, Mr. Eves. I will try to find out. Who says we are not moving to consensus here?

Mr. Chairman: Okay.

Mr. Breaugh: --seems to be among the Liberal members.

Mr. Chairman: Just to make sure we have got everything right, I will just read that.

Mr. Polsinelli moves that the bill be amended by adding thereto the following section 4a, which may be renumbered:

"This act does not prohibit the activities in which members normally engage on behalf of constituents."

Mr. Polsinelli propose que le projet de loi soit modifié par adjonction de l'article suivant:

«4a. La présente loi n'interdit pas les activités qu'exercent normalement les membres pour le compte des électeurs.»

Motion agreed to.

La motion est adoptée.

On section 5:

Mr. Chairman: Section 5, "Accepting extra benefits":

"(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

"(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incidence of the protocol or social obligations that normally accompany the responsibilities office."

Mr. Polsinelli does not want them read, so I do not have to read them.

Hon. Mr. Scott: Before Mr. Eves speaks, if I could just explain how I understand this, to make sure we are on the same wavelength, I understand, if you take subsections 1 and 2 together, that what it in effect says, to put it in the positive, is that a member will only accept a gift or personal benefit that is received as an incidence of the protocol or social obligations that normally accompany the responsibilities of office.

I judge from that, for example, that you would be entitled to receive a plaque; you would be entitled to receive a book, perhaps a gift of the type that is normally associated with thanking a speaker or something of that nature. But apart from the normal protocol or social obligation, no gifts or benefits will be receivable by any member.

It then goes on to say that if in fact a gift is received, the member shall immediately file with the commissioner a disclosure statement explaining the nature of the gift and the circumstances under which it was given and accepted.

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Members may say, "Why do you have subsection 3 if you have subsections 1 and 2?" Because you may receive a gift as a function of protocol that you are not able to return. For example, if I were invited to travel to Bahrain, or somewhere in the Middle East, it is inevitable that I would be given a very expensive gift which international protocol makes plain that it would be insulting to return. I can receive it, because it is an incidence of protocol and to turn it down would be an offence, but if it is over \$200, I have to declare publicly that I have received it.

Mr. Chairman: You could split it with the committee, and then we could share the--

Hon. Mr. Scott: It is not that big a gift.

Mr. Eves: The only comment I would make is that we made an attempt at introducing a proposed amendment to this last week. I see that Mr. Breaugh now has an amendment as well. If the committee is agreeable, I think we should discuss both amendments at the same time, and perhaps we can come up, by consensus, with some suitable amendment if one is agreed upon.

Mr. Breaugh: I have an amendment to this section, and I want to make some comments on it and some others.

We are struggling somewhat with this notion. I am concerned that we are being not quite as sensible as we ought to be. For example, a more common practice would be that a member would be invited to speak somewhere and that as part of the invitation his expenses would be met and accommodation would be provided; even in Ontario, it would not be difficult to exceed the \$200 limit.

For a speaking engagement in Thunder Bay, for example, even though some travel is authorized by the assembly, it is not an uncommon practice to have someone offer to pay for your air fare and provide you with accommodation and a meal or whatever.

My intention is that if a big chunk of money changes hands here, you should have to disclose that and that the commissioner may say, "That's a no-no; it wouldn't be proper for you to accept that \$5,000 gift from somebody, or the \$2,000 gift."

I do not know whether you can fiddle with this limit enough to kind of get it to where it is practical, but I really do not see the sense in having people disclose and the commissioner rule and all kinds of paper flow for something that might be worth a plane ticket to Thunder Bay, which is what we are talking about here, which is in excess of \$200. I do not think that is what we want to do.

I would suggest that if you maintain this approach, you get the limit up to a point where we are all in agreement that there is a substantial monetary interest involved here. It seems to me that probably the best thing is to go through and find a common number that you can use throughout the bill, like a \$1,000 limit or something like that, where people are not going to be filing pieces of paper saying: "I went to Thunder Bay last week. Here's the value of the room at the Red Oak Inn, and here's the Air Canada ticket stub." I do not think that is what we want to do.

I am suggesting if you leave it in the act as it is that you get the value of it to a common level where clearly we are sorting out what might be

seen by some as a lot of money, but I think the pleasure of going to Thunder Bay is enough in and of itself without having to file a disclosure statement on the matter.

Hon. Mr. Scott: I should tell you that in drafting the bill we gave thought to the \$200 limit in much the same way that Mr. Breaugh is concerned about it. It is not an easy question. It depends what example you take. If you take the example of attending the auto workers' annual Ontario convention at Thunder Bay and making a speech, receiving a benefit in the amount of \$350, that is a very different thing, it seems to me, from the point of view of the public, than to go to Caesar's Palace in Atlantic City as a gift from some developer. The dollars may be exactly the same but the public perception of what you are about may be different.

What we really did here was to pick a relatively low figure, bearing in mind the cost of things these days; you cannot fly very far for \$200. We picked a low figure and sort of said: "For anything more than that, you will just have to write a letter to the commissioner. He does not have to rule anything on our section. You just make a declaration with him and then it becomes public." The public will judge whether you should, in a political sense, have to answer because you flew to Thunder Bay to speak to the auto workers and it cost \$400.

We did not require the commissioner to do anything about that unless there was a complaint. You just made the filing. It is just a question of writing a letter. I have already done it once. Then when the filing is made public, it will be for my colleagues in the Legislature to decide whether they want to make a complaint about what I have done or for the public electorate to decide that I have abused its trust.

Mr. Breaugh: My problem with the approach you have taken, and I think it is a good example of the two different perspectives on how you do this, is that under the bill as is, somebody could give me a large amount of money, \$20,000.

Hon. Mr. Scott: No.

Mr. Breaugh: I think they could and I think what I would have to do is disclose that.

Hon. Mr. Scott: No, they could not give you that because that would be a fee, gift or personal benefit and you are not entitled to accept it under subsection 1 at all. You are only entitled to accept it, if it is connected with the performance of your duties, if it is a gift or personal benefit, not money, not a fee, "that is received as an incidence of the protocol or social obligations that normally accompany the responsibilities of office."

You would say: "To be invited to speak at a convention is a normal part of my job as a member and a public figure. To pay the cost of that is normally associated with the protocol of being invited to speak somewhere out of town." It is prohibited under subsection 1, but you would be entitled to accept it under subsection 2. If it turned out to be more than \$200, you would have to go a step further and write the commissioner about it.

Mr. Breaugh: What would prevent you from keeping a large donation?

Hon. Mr. Scott: If you went and made a speech and you were given, let us say, \$1,000 in singles at the end of dinner, it would be an offence, if

anybody found out that you received that, under subsection 1. Why would it be an offence? Because it would be "a fee, gift or personal benefit...that is connected directly or indirectly with the performance of his or her duties of office," and it would not be justified or explained by any protocol or social obligation because everybody would say, "Look, there is no protocol that you give \$1,000 for those things."

Mr. Breaugh: I am having--

Mr. Chairman: Mr. Polsinelli has a short question, Mr. Breaugh.

Mr. Polsinelli: It is along the same lines, Mr. Breaugh. I am also a little bit confused as to what this section says. I can understand that if I were to undertake a speaking engagement and received 1,000 one-dollar bills, that would not be justified and I would be in contravention of the section, but what if a friendly developer in one of the townships surrounding Metropolitan Toronto were to offer me a trip to Las Vegas and \$1,000 for no reason whatsoever? Then I would not be in contravention of the section.

Hon. Mr. Scott: If you think you are getting it for no reason whatsoever, you have a problem. That would not be permitted under the section either because that would be a benefit.

Mr. Polsinelli: But under which section?

Mr. Breaugh: What you are arguing, though, is that nobody could accept the Nobel Peace Prize under this bill.

Mr. Chairman: Under what section?

Hon. Mr. Scott: Under section 5, a gift of \$1,000 to fly you to Las Vegas would be a fee, gift or personal benefit.

Mr. Polsinelli: But there was nothing I did in connection with my office to receive that. It was a gratuitous gift because he likes me.

Hon. Mr. Scott: Let us take two gifts of \$1,000, one from a developer in your riding to fly you to Las Vegas and one from your grandmother. You are perfectly entitled to accept the gift from your grandmother and pop right into the bank. There is going to be no attack on that, in my judgement. The gift from the developer you are entitled to accept, and you can say to yourself, "This is not connected directly or indirectly with the performance of my duties of office." If someone makes a complaint about you receiving that \$1,000, the question for the commissioner will be, "Was that gift reasonably connected, directly or indirectly, with the duties of your office?" If the answer is yes, then it will be held that you have committed an offence by receiving it.

Personal gifts that are personal in the real sense you can continue to accept. The award of the Nobel Peace Prize is not connected, so far as I can so far see, directly or indirectly, with the performance of your duties.

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Mr. Breaugh: Sure it is.

Hon. Mr. Scott: That is your judgement, not theirs.

Mr. Breaugh: I am the one who is getting the prize.

Hon. Mr. Scott: They are the ones giving it.

If you receive a gift, the member has to say to himself before he accepts it: "Why am I getting this? Am I getting this just because I am lovable me or am I getting it because I am a member of the provincial parliament who has the opportunity to vote on things that are important to this donor?" If the answer is yes, that is why you are getting it, then it is an offence to receive it.

Mr. Eves: I am coming at this from somewhat the same perspective as Mr. Breaugh. Perhaps the figure of \$200 is too low. I understand what the Attorney General is saying, but by the same token, there should be some figure put on gifts or benefits which members or members of the executive council are entitled to receive.

For example, say a visiting head of state came to visit the Premier and, as a matter of protocol or gratitude or whatever, presented to the Premier a piece of art that was worth several thousands of dollars. Under the statute, the way section 5 is drafted, is it my understanding the Premier would be entitled to personally own and keep this piece of artwork provided that he disclosed he had received a piece of art worth \$20,000. So he discloses that to the commissioner, in section 5, the way I read it, and that is all hunky-dory.

Hon. Mr. Scott: No. Under the present act, he would have to say to himself: "Can I turn this down? Can I say, 'It is very kind of you, but I cannot really receive gifts?'" In the example you give, I think, where there is a kind of protocol, anybody advising him would say, "It would be considered offensive to try to explain that; so receive the gift but it is valued over \$200 and you are going to have to tell the commissioner about it in a public way."

Mr. Breaugh has an amendment which will say what you have to do with the gift, and we are prepared to accept his amendment, which is that you have to dispose of it as the commissioner may direct. I have no problem with that amendment and, in so far as that amendment is not in the bill, it can be perceived there is a gap in the bill because there is no direction as to what happens with the gift.

I received a Minolta camera. It was clear I could not refuse it because I asked the people who were advising the donor if I could and they said: "No, it would cause a terrible scene. They would not understand." So I received it, I declared it with the commissioner, but then what to do with it? This albatross in a leather case is hanging around my neck. What to do with it? I was all ready to give it away when someone said: "I do not know whether you can give it away. It may belong to Government Services." So we got an opinion from my ever ready department and their opinion was it belonged to me. I asked the commissioner if I could give it to be auctioned by a charity in my riding, and he said yes.

Mr. Eves: That was basically the intent of our amendment as well. Our amendment was perhaps somewhat more limited in that you either had to return it to the donor, which I could see in certain circumstances certainly would be offensive, or it became the property of the crown in the right of the province. I am certainly willing to look at Mr. Breaugh's compromise amendment, if you will, but I really think there is a gap in the act, and it should be addressed. That is the only point we are making.

Mr. Polsinelli: I do not disagree with what Mr. Breaugh is trying to do, but I do not think his amendment effectively does what he is intending it to do because, as I read this section, if a gift or personal benefit does not contravene the section and it is worth more than \$200, then you can keep it as long as you disclose it. If it contravenes the section, then you are not entitled to accept it. You are in breach of the act by accepting it. Therefore, this amendment really says that if you are in breach of the act by accepting a gift which you are not entitled to accept, then the commissioner can have you dispose of it.

It seems to me that in fact what this is doing is establishing, if I were a lawyer interpreting this new section with subsections 4 and 5 as added by Mr. Breaugh, I would in a sense read this almost as a penalty clause. If you breach this section, then the commissioner can have you dispose of the gift rather than applying the remedies that are later found in the act. I do not know whether counsel or the Attorney General shares my interpretation.

Hon. Mr. Scott: I accept that. That is why I indicated that the government had no difficulty with the NDP proposal. The difficulty with Mr. Eves' proposal is that it says directly that a member who receives a gift referred to in subsection 2, that is a protocol gift, which is worth more than \$200, then that protocol gift becomes the property of the government or has to be returned right away. The difficulty with "returned right away" is if it is a protocol gift, the assumption is it cannot be returned right away. The other difficulty with the protocol gift returned right away is that you may have eaten it or flown on it and be incapable of returning it. That is also the difficulty with delivering it to the crown. The gift or benefit may be one that is used and you will not be able to do anything with it except remember it fondly.

Mr. Chairman: You might have that bottle of wine that is worth \$50,000.

Mr. Eves: I appreciate what the Attorney General says. My approach to remedy our amendments, if it is remediable, would be to increase that limit to some more realistic amount, such as \$1,000, as Mr. Breaugh suggests, and perhaps even point out that either the member should refuse it in the first instance, return it or donate it. I accept what you say about some items. Certainly the example I gave, a piece of art, now that could be donated to the crown in the right of the province of Ontario. I think that perhaps we should make a realistic limit, such as \$1,000, and if you are talking about flying on it or eating it, then I think the members of the Legislature should understand quite frankly that they cannot accept a flight, a dinner or something of that nature if the value is likely to be in excess of \$1,000. The line has to be drawn somewhere.

Hon. Mr. Scott: But let us be clear. If you follow the rule, the only gift that will come into your hands or come into your stomach, the only gift you can receive is one that is received as an incidence of the protocol or social obligations that normally accompany the office. That is the only kind of gift you can receive, a normal protocol or social obligation gift.

Now, most of those you are no doubt in the habit of hanging on your office wall, if you are anything like me, or digesting it. All this says is that if one of them costs more than \$200, you will declare it. Now, if you think that threshold is too low, that is you should not have to declare until \$400, \$500 or \$1,000, I am prepared to respect the committee's view, but I just counsel you frankly that for many people to perceive that members are

getting undeclared gifts as a result of social obligations much above \$200 is going to come as something of a surprise to them. I leave that up to the committee. We are open on the dollar figure.

1510

Mr. Philip: The tradition or, if you want, the protocol of some organizations may well be that their honorarium to the guest speaker at their convention ranges anywhere from \$350 to \$1,000 or \$2,000, depending on the size of the organization, the type of convention and so forth. So under this, if I were to receive it, am I covered by subsection 1 or subsection 2--or I have to go through subsection 3, I guess.

Hon. Mr. Scott: I think you are not entitled to that at all. If you are being paid income in that range by somebody else, that is a fee; it is not a gift or personal benefit. If that is connected with the responsibilities of your office, you cannot take it.

If you were unconnected with the responsibilities of your office, a popular figure at a speakers' bureau, you might be supplementing your income between sessions. But I do not think this section or any other contemplates that you will be going around as a parliamentarian speaking for a fee. That is not to say that you will not get your disbursements paid and your transportation and your hotel and all the rest of it, but the scheme of this act is that you were not elected to go out on the speaking circuit and earn fees. If you get an honorarium and your expenses defrayed, that is fine, but you were not elected to put you into business.

Mr. McClelland: I have a supplementary that flows from Mr. Philip's comment. It is speaking from a fairly personal set of circumstances.

There are people who in the past from time to time have spoken at various organizations, albeit not for \$350 or \$500 or whatever. I think it is important to explore this somewhat.

I will be very candid. For example, at a certain chapter in my life, I often spoke to youth groups, particularly those associated with various church and parachurch functions. The reality is that since September 10 I have had perhaps more invitations than I had in the previous six months.

If I chose to keep honoraria--putting that aside, for what it is worth, I choose not to do that, but if I was to choose to keep them, would I then be--and I see that as being indirectly associated with my duty of office, inasmuch as I am receiving a greater frequency of invitations than I did prior to September 10.

Hon. Mr. Scott: I think if you are being invited to speak because you are a member and you are being paid a fee, you cannot accept that fee. That is part of your duty of being a member. You can accept disbursements and you can accept a protocol gift, but you were not elected to earn fees on the speaking circuit.

If you can demonstrate, "Look, I am speaking on goldfish, their propagation and care, and I have been doing this for years; that's my career, I am a veterinarian," then you are earning fees from a private business, just as a lawyer, a doctor or anybody is.

Mr. McClelland: I can think of a former member of the House, by way of example, and I do not think it is totally absurd. If somebody like Dr.

Shulman decides to seek office again--and he speaks frequently--how do you relate--

Mr. Philip: "Incessantly" is better.

Mr. McClelland: Yes. I do not want to pursue this at length. I am just interested in your comments.

Hon. Mr. Scott: I think Dr. Shulman is an interesting example because he is a famous speaker on the lecture circuit on the subject of how to become a millionaire and how to deal with the stock market. In a certain sense, I would guess, he is into the business of being a professional speaker on that subject, the way you may be into the business, in your spare time, of practising law. If in his spare moments as a member of the Legislature, and not being a cabinet minister, he decided to carry on making those speeches, I think then he would have earned income from his speaking career which he could list.

No one has any problem with that, but most members are not in the speaking business per se and maybe you are not either because if you have said to us that you have had a significant increase in these requests since September 10, that tells us something. It tells us that people do not want to hear Mr. McClelland so much, they want to hear the member for Brampton North. And, if that is what they are hearing, and if that is why you are out there speaking, you are not allowed to charge a fee for that, though you can get a protocol gift and certainly your costs and expenses paid. Your costs if you are asked to fly to Thunder Bay and fly back and stay overnight would not be a personal benefit in my opinion it would just be your disbursements. You get no benefit from that because you would be staying at home otherwise.

Mr. J. M. Johnson: Every Christmas I receive a gift from a contractor and I am not sure of the price or if I would be in conflict. The gift is an adopted child from Central America or South America. Each Christmas I receive this new child. Is that in conflict?

Hon. Mr. Scott: I am not quite sure what you are getting at. Presumably you are not getting a new child every Christmas.

Mr. Breaugh: He sponsors a child on his behalf.

Mr. J. M. Johnson: Adoption of a child in Central America each year.

Mr. Chairman: On your behalf?

Mr. J. M. Johnson: Yes. I do not know the value but I would assume it would be over \$200. It is not a speaking engagement. Is it considered bribery or something?

Mr. Chairman: Is it a tax write-off?

Hon. Mr. Scott: I do not think you are in breach of the section if you allow that to occur because I do not judge that you have received a fee, gift or personal benefit. What has happened is that some of this may be donation to a charity in your name. I take it you do not get a tax credit for this.

Mr. J. M. Johnson: I have no idea.

Hon. Mr. Scott: I would say you have not received a fee. You have not received a gift. You have not received a personal benefit. What has happened is that somebody else has received a personal benefit and your name goes on the card. I do not see that is a breach of subsection 1. If it is not a breach of subsection 1, it is fine.

Mr. Philip: Unless you are a director of that organization that is getting the benefit.

Mr. Eves: I appreciate the comment that Mr. Polsinelli made about the exact wording of Mr. Breaugh's amendment where it says "acceptance of a fee, gift, or personal benefit contravenes the section." The word, "contravenes" I think presents the difficulty to Mr. Polsinelli and others.

I was wondering if it might be possible for legislative counsel, if the Attorney General is willing to entertain such an amendment, for an amendment along the lines that Mr. Breaugh has introduced, perhaps changing the wording. Just allowing or giving the commissioner the power to determine the course of action on any gift, fee or benefit in excess of \$200. The appropriate action as the commissioner deems right or proper under the circumstances. I do not know what the exact wording would be. I know the intent that Mr. Breaugh is getting at. I think the intent is good and should somehow be able to be worded in language that would not be offensive to what the Attorney General wants or to what Mr. Breaugh wants.

Hon. Mr. Scott: I have it then that what we have is the NDP amendment, which basically says that if you received a gift you should not have, then the commissioner will direct where it is to go. In other words, if you have breached section 1 and are about to be drummed out, the commissioner can also, in addition to ordering a reprimand, order where the gift goes. That is the NDP amendment.

What you are saying, if I have it right, is that in addition to that, there should be a provision in the event that you have received a gift that is permitted by subsection 2, a personal benefit, but which is worth more than \$200.

Mr. Eves: The commissioner might think it more appropriate for the province of Ontario to own the gift than the individual.

Hon. Mr. Scott: Yes, and a gift that is not consumed.

Mr. Eves: That is right.

Hon. Mr. Scott: I mean if you get the chocolates home first and eat them the commissioner is not going to be able to do very much about it. We could perhaps see if we could not add that concept into Mr. Breaugh's amendment. It is a thing that would apply only if the gift was not consumable, I presume.

1520

Mr. Polsinelli: I have two questions for the Attorney General. For personal clarification, Mr. Scott, the first question is with respect to subsection 3. There are sometimes items that will appear to not exceed the \$200 mark but will in fact exceed the \$200 mark. Is there any element of knowledge? I mean does a member's knowledge of what the gift is worth have anything to do with this subsection?

My second question is with respect to subsection 2, or any other subsection there: Does that cover lunches? If someone were to buy me lunch, for instance, would that be considered to be in breach of the act or would we be able to? Further along that line of example, occasionally around Christmastime some of my constituents will bring me bottles, which I cannot refuse. What do I do with those?

Hon. Mr. Scott: To answer your second question first, if you receive a bottle, which you cannot refuse, then I take it you accept it because you cannot refuse it under subsection 2 as a social obligation. It is not worth \$200, so you do not have to declare it. The paperwork to that extent is reduced. That deals with your second question.

In answer to your first question, if you are having \$200 worth of lunches because you are a member of the Legislature, no one says you should not have the lunches perhaps, but what we say is you should begin to let the rest of us know who is wining and dining you.

Mr. Breaugh: I have a suggestion to make. I really think we should stand down this section and rework it and see if we can come up with some common ground here. I am concerned that we are going off into minutiae that are of no consequence to anyone, just a totally useless, stupid exercise. While we are headed off in that direction, we are missing major conflicts of interest without finding a way to deal with them.

I would ask you to stand this section down and see if we can find the words in English and in French that identify the real conflict here and deal with this matter perhaps tomorrow.

Hon. Mr. Scott: Let me see if I have the sense of the committee. I take it we would like to find an amendment to section 5 that takes account of the NDP amendment and Mr. Eves's suggested amendment deleting the "goods will be returned" provision. We can try to do that.

I take it also in terms of declaring publicly the gift--because that is a critical thing: At what point should you be able to tell the public you have received something?--the only point we can get at in a statute seems to be a dollar measurement. Is \$200 right or is it too low?

Mr. Breaugh: Just on that, I have no problem with the members in their actual disclosure statements itemizing that they got this or that, everything over \$100 or over \$200. I do not think that is cause to bring in a commissioner, lawyers, opinions, filing papers and all of that. What I want is for the substantive amounts, the substantive pecuniary interest probably, to be identified.

I want a way to resolve that which, in my view, involves the use of the commissioner giving his decision on whether it is OK for you to keep that or not and whether you have to dispose of it or not, because it all depends on what it is. I am searching for something substantive, something where the commissioner has the power to say, "Yes, you can" or "No, you can't," and if he says you cannot but you already have it, he can make you dispose of it.

I am looking to deal with the major conflicts and I have no interest in who went for a power lunch this week.

Hon. Mr. Scott: But the way you describe what you want us to do does not tell us what you want to do. You want to exclude power lunches, but I take

it you want to include the other lunches that someone may buy for us that are designed to affect our judgement. Everybody can take a concrete case and look at it and say, "Oh, yeah, this is fine" or "That is not fine." The problem is to devise some language that takes account of both sets of cases, or you are going to have a completely individualized judgement, which I take it from your analysis of the other sections is exactly what you do not want.

Mr. Breaugh: Let me try to be a little more specific then. I have no interest in doing what you have attempted to do here at all, none. What I am interested in is where a judgement call has to be made as to whether a member gets a retainer from a company in the private sector, a trade union local or whatever, and it is substantive, and I or any other member of the assembly wants to complain about it.

Hon. Mr. Scott: What does "substantive" mean?

Mr. Breaugh: It is \$1,000; \$2,000; five hundred a month. To think in practical terms, I know of members--

Hon. Mr. Scott: That is income. That is covered.

Mr. Breaugh: No, I do not want to play that game. You may argue that it is income. Someone else might say: "No, it is not income. They gave me a gift." To be polite about it, I want to dispense with that type of routine. I want to find a way that someone can stand in the assembly or write a letter to the commissioner and say, "I have personal knowledge that Gilles Morin is getting a retainer, a regular gift, from a trade union local and here are the circumstances as I know them." The commissioner has the obligation under the act to investigate that and to say: "That is all right. That is okay within the act," or he can say, "No, it is not," and you have to cease and desist.

We have certainly had examples--not Mr. Morin--of members who were employed by the private sector while still being a member and there was nothing to do about that.

Hon. Mr. Scott: What you may be arguing for is another section in addition to section 5, but I think you are going to have to have section 5 sooner or later because when members receive one-shot gifts, do you not think it appropriate the public should know what they received and from whom?

Mr. Breaugh: If they are substantive, yes.

Hon. Mr. Scott: Well, yes.

Mr. Breaugh: Our argument would be about what is "substantive."

Hon. Mr. Scott: On this question, the issue is what "substantive" means. Maybe the \$200 for a gift is too low; \$500. The first question I ask you is, what is the plateau under the existing section 5 that you would regard as declarable? The second question you put to me is, can we not have some scheme so that the ability of a member to earn income can be vetted or examined by the commissioner in some fashion? I will be delighted to look at that question.

It seems to me that is getting pretty close to determining what kinds of private enterprise a member cannot enter into. That is interesting. It may be said that a member should not be able to be in the land business. It may be said he should not be able to go on speaking tours. We can certainly look at

that second point, but if you would first tell me what figure you would like in section 5, I would be grateful.

Mr. Chairman: Mrs. Sullivan has a comment. Do you want to comment on the figure or something else? The Attorney General has mentioned a figure two or three times, and before the amendment is drawn up, I am wondering whether the committee members want to address the \$200 figure for a moment. Do you want it \$200, \$250, \$300 or \$500? There is no sense making that as a separate argument. Let us make it part of it. Did you want to speak to that, Mrs. Sullivan?

Mrs. Sullivan: I really want to speak following from what the Attorney General has just raised. Going back to the concept of work and actually bringing that into the gift situation, members are allowed to work and they can engage in professions, carry on businesses and receive income from work. In certain circumstances--mine is one--I know there are other members of the Legislature who have decided that because of the work they were doing before, it is impossible to carry on that work as a member of the Legislature.

I was involved in government advocacy. I was working with the Treasurer (Mr. Nixon) and that is clearly something I cannot do now. There are going to have to be very personal decisions about what people can do. In terms of the work, when members are elected, they receive a limited overall income and a limited income for travel. When I look at this section, I think that what it is not talking about is the money that is expense money to get to and from a place over and above what the Legislature allows. It is money that is going to basically be a payoff for a decision that member makes.

I think we may be moving out of the realm of common sense in talking about \$200 being too low. Indeed, if Mr. Breaugh in the course of his work is speaking in North Bay and he has spent all of his legislative member's allowance for travel, or even if he has not, it seems to me that it is legitimate for travel expenses to be a part of his appearance at that event. But that is not a fee and it is not a gift; it is a personal benefit.

1530

Hon. Mr. Scott: It is not covered by the section.

Mrs. Sullivan: It does not contravene the Legislative Assembly Act, which says that we cannot do that work, so it seems to me that could be accepted.

To most people I know \$200 is a pretty big gift. Whether it is a statue, a violin case, a rock or whether it is a cash donation, it is still a pretty big gift. When I look at some of the things that members do, you might go to fund-raising dinners where the price tag is \$150 and that price tag is removed from the member; in other words, the member is invited to go. In fact, the gift is not \$150; the gift is the value of the dinner.

Even the value of a \$200 or \$500 fund-raising event probably is not necessary here. I think to most of my constituents, and I have an affluent riding, \$200 looks like a pretty big gift and I would like to have that written down. I would certainly write it down.

Mr. Chairman: Let us get one thing clear. When you go to a \$200 or \$300 fund-raising dinner, you do not get a \$200 or \$300 gift. You get a gift

of maybe \$50 because you do not get the tax benefits the person gets who buys the ticket.

Mrs. Sullivan: That is part of my point.

Hon. Mr. Scott: Can I just make my point clear as we go away to try to draft this? First of all, I accept as given what Mrs. Sullivan says, that travel expenses are not prohibited by this section and have nothing to do with it. This section only relates to fees, gifts or personal benefits.

If you think the gift of a ticket to get you up to Thunder Bay and back and pay your hotel room is a personal benefit, I am telling you it ain't. It certainly is not a gift or a fee; it is the way they get you up there and the way they get you back without defraying your expenses. That has nothing to do with and is not prohibited by this section.

What the committee has to focus on, it seems to me, is when you get a gift, a statue or whatever, at what point should you declare? When you get a gift, you have to say no, unless it is a normal part of the social obligation. If it is a normal part of the social obligation--and it seems to me it will not be very often that it is big--I mean what social obligations are we undertaking where we normally get \$200 gifts? I have never had one. Then you decide what threshold.

Mr. Breaugh's third point, as I understand it, is that private members earning income should face the fact that the commissioner should be able to say: "You cannot earn that income. We know you are going around speaking to the United Auto Workers all over the province, but they are very interested in politics and you should not be able to earn that income in your spare time." In effect, that is a kind of divestment. We have talked about divestment of assets; this is divestment of your income. You cannot earn your income in your spare time by doing that.

Frankly, it was not the intention of this bill to spell out things that a member could not do to supplement his income in his spare time. It was simply the focus of our bill that if you did certain things in your spare time, you had to list the income you got and the source. If you voted on something that affected that source, you might be in some problem, but apart from that, it would be for your constituents and the public to judge whether your other income source had made you an unattractive member.

Mr. Breaugh: I tend to agree with Mrs. Sullivan that the perception of the value here is important. For me, if you said anything over \$100 has to be declared or you cannot receive it, it seems to me that catches that part. That gets out all of the little plaques, the mugs, the books and all of that.

Hon. Mr. Scott: It is a problem with dinner and a couple of bottles of wine.

Mr. Breaugh: OK. I think we need to make that distinction. The only way I can sort through this is to really kind of say, if it is a fee or a gift and it is more than \$100, either you should not get it at all or you should at least have to disclose it. That solves my problem. If we go the other route and say, "But we really do not mean travel expenses, which are not part of this, or even a good dinner, which is not part of this either," to draw from my own personal experience, for example, the United Auto Workers have a very nice educational school in northern Michigan at Black Lake, and I have been invited to be a guest lecturer there. They did not pay me any money but they

did provide me with air transportation. I cannot remember what the exact value was, but I bet it was in excess of \$300.

It was a week at an education resort that is administered by Hilton, and it is a very nice place to go. If you say, "But he did not get a fee," I think is the pertinent thing here. If you get a fee or gift, you have to at the very least declare it, but if somebody is meeting your expenses, feeding you very well or whatever, that is very difficult to codify in the first place, and I am not sure we should even bother with it.

I am disturbed a little bit over the power lunch idea, but how much can we do with this?

Hon. Mr. Scott: I think the very thing you have described, apart from the \$100, is what this section does. As I understand it, it does not cover travelling expenses.

Mr. Breaugh: Then let us say so explicitly. This is what I raised initially. This thing about personal benefit is very difficult to define, and the Americans had a lot of problems with this because members of the Congress were regularly, as part of their professional work, attaching themselves to corporations and going to conventions and delivering speeches.

I just think we have to be more specific. If you want my bottom line, I would say that if it is a fee or gift and it is worth more than \$100, it comes under this, and if it is somebody offering travel expenses, lodging or meals, it is not considered under this at all, and we should say so explicitly.

Hon. Mr. Scott: When you are speaking to the United Auto Workers bargaining committee, even at the most attractive hotel--I understand what you are saying--but what is to distinguish that from the simple assertion that the member will be given a ticket to fly to Fort Lauderdale and hotel accommodation there for a week?

You have been given a holiday in the sun. I think that should be declared. I think the fact that someone out there is giving you a holiday in the sun should be declared and be a matter of public record. I am not saying you should not go.

Mr. Breaugh: I have been offered holidays in hotter places than that.

Hon. Mr. Scott: OK, but the trouble comes when you are talking about a benefit that is more than the travelling expense. No one has any problem with the travelling expense that is designed to get you up to Thunder Bay and back, because that is just a pure travel expense. But if you are going to speak for 20 minutes at the UAW convention and it is held in Hawaii and they get you out there and give you a hotel room for a week, we are now beyond disbursements. You have received a gift at their hands, which is a one-week paid vacation.

I think the only way to deal with that is the way we have, to say, "Look, you value the thing at the end of the day, deducting the disbursements"--disbursements do not count if they are simply for a trip to speak--"and if it is more than \$200, you should not accept it. If you do accept it, you should certainly declare it."

Mr. Polsinelli: I have been working on a rewording of the section, and I wonder if perhaps you could listen to it. I have reworded all of section

5 using essentially most of the wording that is in the existing section 5 and some of Mr. Breaugh's amendment. Section 5 would read like this:

"A member who accepts a gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office shall (a)"--and that would be the whole subsection 3, the disclosure requirement.

"(b) If the commissioner is of the opinion that a member has accepted a fee, gift or personal benefit that is not received as an incidence of the protocol or social obligations that normally accompany the responsibilities of office, the commissioner may, in writing, direct the member to dispose of it in a specified manner.

"(c) The member shall comply with the direction."

Essentially what I have done is basically taken it from a negative point of view to a positive aspect. I wonder whether you have some comments on it.

Hon. Mr. Scott: If you could leave that, I think counsel from my department has heard all the discussion and has heard the various amendments, and we will try tomorrow to produce something that encapsulates what the committee seems to have in mind, so perhaps we can stand down the section.

1540

Mr. Polsinelli: If we are going to be standing down this section, given that this committee has decided to abstain from allowing smoking here, could we take a five-minute adjournment?

The Vice-Chairman: First of all, is it agreed that we stand down this amendment?

Section stood down.

L'article est reporté.

The Vice-Chairman: Does the committee wish a recess of five minutes?

Mr. Breaugh: I am going to have a little difficulty in staying much past four o'clock this week. Does that pose a big problem? All it means is that if we start reasonably on time at two, we can get a couple of hours in. Today is OK, but the rest of the week--

The Vice-Chairman: Do we all agree to adjourn at four the rest of the week? Yes?

Mr. Philip: We are sitting until five today and until four the rest of the week.

The Vice-Chairman: Four or five?

Mr. Breaugh: Today is OK. It is just Tuesday and Wednesday I have a little problem.

Hon. Mr. Scott: Could I ask that the committee might indulge me by not sitting beyond 4:30 today?

Mr. Breaugh: Sure, fine.

The Vice-Chairman: All agreed? Agreed.

Mr. Polsinelli: Do we still take a five-minute break?

The Vice-Chairman: We all agreed, so you can go.

The committee recessed at 3:47 p.m.

1558

Mr. Chairman: We will deal with section 6 then and, as I understand it, we will sit to 4:30 today.

One other thing: While we are talking about this, is there any general objective that you have with regard to trying to complete this bill, or are we going to leave that fairly loose at this point? Someone suggested to me we should try to complete it by Wednesday. Is that a reasonable time to aim for?

Mr. Breaugh: I would say early spring, something like that.

Mr. McClelland: February 8 sounds good.

Mr. Breaugh: That seems to be a technically acceptable term for a time frame.

Hon. Mr. Scott: Early fall.

Mr. Breaugh: Early fall, says the AG. OK.

Mr. Chairman: In the fullness of time. I think I have heard that term before. Let us try to aim for Wednesday then, that is, this Wednesday, in the season of winter, OK?

On section 6:

Mr. Chairman: Section 6 deals with the executive council.

Mr. Eves: We have an amendment to subsection 6(1) which we circulated to committee members last week.

Mr. Chairman: Mr. Eves moves subsection 6(1) of the bill be struck out and the following substituted therefor:

"6(1) The executive council, a member of the executive council or an employee of a ministry (other than an employee of an agency, board or commission) shall not knowingly,

"(a) award or approve a contract with, or grant a benefit to, a former member of the executive council or parliamentary assistant, until 12 months have expired after the date when the person ceased to hold office;

"(b) award or approve a contract with, or grant a benefit to, a former member of the executive council or parliamentary assistant who has, during the 12 months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit;

"(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the executive council or parliamentary assistant has, during the 12 months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit."

M. Eves propose que le paragraphe 6(1) du projet de loi soit remplacé par ce qui suit:

«6(1) Le Conseil des ministres, l'un de ses membres ou un employé d'un ministère (à l'exclusion d'un employé d'un organisme, d'un conseil ou d'une commission) ne doit sciemment:

«a) accorder ni approuver un contrat en faveur d'un ancien membre du Conseil des ministres, d'un ancien adjoint parlementaire ou d'un ancien fonctionnaire supérieur, ni lui accorder un avantage, tant que 12 mois ne se sont pas écoulés à compter de la date où la personne a cessé d'exercer ses fonctions;

«b) accorder ni approuver un contrat, ni accorder un avantage en faveur d'un ancien membre du Conseil des ministres, d'un ancien adjoint parlementaire ou d'un ancien fonctionnaire supérieur qui a fait des observations concernant ce contrat ou cet avantage pendant les 12 mois qui suivent la date où la personne a cessé d'exercer ses fonctions;

«c) accorder ni approuver un contrat, ni accorder un avantage en faveur d'une personne pour le compte de laquelle un ancien membre du Conseil des ministres, un ancien adjoint parlementaire ou un ancien fonctionnaire supérieur a fait des observations concernant ce contrat ou cet avantage pendant les 12 mois qui suivent la date où la personne a cessé d'exercer ses fonctions.»

Mr. Eves: Basically, our amendment has exactly the same wording as is in the proposed bill, except that it incorporates parliamentary assistants as well as members of the executive council. That is what it does.

Hon. Mr. Scott: Could I just observe, as Mr. Eves has done, that this is, I think, the first of a number of amendments he has which deal with the role of parliamentary assistant. I take it that is why we now have to deal with it.

The issue for members of the committee is very simply this: Where do you put parliamentary assistant on the scale in between cabinet minister and member? Assuming that there is going to be some consistency in the treatment of a parliamentary assistant, we will be deciding this question here for the purposes, I presume, also of section 7 and a number of other sections where the Conservative amendment is again presented.

After very careful reflection, it has been our view that the parliamentary assistant should not be treated as a cabinet minister but should be treated as an ordinary member. He will have to make the normal disclosure and declarations and he will probably have more declarations of conflict to make than many members because he will be making perhaps more decisions.

But he does not sit in cabinet or cabinet committees, and, really, the parliamentary assistant's role historically is very much a function of what the minister to whom he is assigned wants to assign to him. There are many supremely qualified people who are parliamentary assistants but, because of some lack of chemistry, do not get very much to do at the hands of their minister. There are others who get a lot to do. That is the dilemma.

Mr. Eves: I appreciate the Attorney General's comments, having been a parliamentary assistant who was given--

Hon. Mr. Scott: And a minister.

Mr. Eves: And a minister. When I was a parliamentary assistant, the only minister I was ever PA to was the Honourable Bette Stephenson. That was an interesting scenario, shall I say, for about a year and a half or 15 months. I was given quite a bit to do, and she had absolutely no hesitation about giving her parliamentary assistant a lot of responsibility.

I quite appreciate what the Attorney General is saying. Having been around here for not a long time but about seven years now, I know that there are some instances where various ministers of the crown really treat their parliamentary assistant almost as a junior minister and others where ministers treat their parliamentary assistant as being almost a nonentity. They provide him with an office, a nice place to go, a bit of extra income and that is about it.

However, I think it is kind of unfortunate actually that the first place this amendment with respect to parliamentary assistants arises is in section 6, because the discussion with respect to subsection 7(1), for example, being able to engage in a profession or other employment or carry on a business, or section 7a that we have proposed with respect to divestment, perhaps would more appropriately get to the heart of the matter we are discussing.

Quite frankly, I wrestled with this dilemma too, having been a parliamentary assistant and a minister of the crown at some point in my brief political career. I think there are quite a few instances where parliamentary assistants have access to quite a bit of knowledge when ordinary members do not, and in many cases have as much access as some members of the executive council.

Going back a few years when Bill Davis was Premier, I can remember several of our members not accepting parliamentary assistantships because of the conflict-of-interest guidelines that were in place then. They would not have been permitted to carry on--I can think of numerous instances--the practise of law or other businesses. I really think it is most appropriate because if I were going to err in drafting the bill, I would err on the side of what I consider to be caution and include parliamentary assistants.

I fully appreciate that there may be a difference of opinion on this matter. I, for one, have always thought parliamentary assistants perhaps are reimbursed too little by the province for a lot of the work they do. They have some very real responsibilities if their cabinet minister chooses to give them the same. They have some very direct input in decision-making and sometimes even serve on cabinet committees. I do not know if that is the case in this government, but it certainly was in Bill Davis's government. The regulations committee of cabinet under Bill Davis's government was comprised entirely of parliamentary assistants, with perhaps one minister without portfolio or some junior minister of the crown.

That being the case and having thought about this situation for some time, we have decided to try to include and treat parliamentary assistants in the same category as members of the executive council when dealing with all these matters in the various sections.

Mr. Philip: If the purpose of the bill is to catch the exception, the exception being where there is a conflict or might be a conflict, and the

norm being where there normally would not be, then I guess one has to ask in the case of parliamentary assistants, are there instances we know from our experience where a parliamentary assistant really acts as a minister?

Some of us who have been around here for a while probably think of situations where David Rotenberg basically acted as minister of municipal affairs. I never saw Claude Bennett introduce one municipal bill. I am sure the deputations--we have a former alderman here from North York who would probably verify this--would go to David Rotenberg, not to the Minister of Municipal Affairs and Housing. I am willing to bet that if I were a fly on the wall at that cabinet meeting, any municipal bills were probably not introduced to cabinet by Claude Bennett but by Rotenberg, who was responsible for leading them through the House.

Sure, there are a lot of parliamentary assistants who may well not have very much more influence than an MPP or critic, but there are--you may find more of this under a minority government where you usually have a lesser number of ministers--parliamentary assistants who have an awful lot of influence and are the ones responsible for supervising and working with the key draftsmen in drafting legislation and regulations. I think that is what we are dealing with.

Hon. Mr. Scott: Can I make one observation? I think Mr. Eves puts the issue before the committee very fairly. It would be better, as he says, if this were canvassed under section 7, but here it is and we are dealing with it. The issue really is that a member of the Legislature is entitled to carry on another business in addition to being a member of the Legislature and a cabinet minister is not. He is not even entitled to manage his own financial portfolio. Do we want to impose that kind of restriction on a parliamentary assistant?

1610

I think Mr. Eves has very fairly put the point and has very fairly observed that there is a wide variety of ways in which parliamentary assistants are traditionally used. I would not want you to think, however, that once you are a parliamentary assistant you have no obligations under this bill. You obviously have the same obligations as a member which, because you may have other duties, will be more vigorously heightened. Just like the role of a critic will be vigorously heightened when he makes a pitch to his caucus to adopt one line or another on a particular bill.

For example, not only where there is an actual conflict, do you have to make the declaration, but you cannot under section 3 use insider information, which a parliamentary assistant perhaps may more often have than an ordinary member has; and you cannot breach section 4, which is the influence provision.

What we tried to do was to look not at the proposition that this bill should be one designed to catch those at the margin who behave the worst. In other words, I take a different attitude than the member for Etobicoke-Rexdale (Mr. Philip). This was to set down a series of guidelines in statutory form that would govern all, more or less, alike.

The issue really then becomes: Should a parliamentary assistant be deprived of carrying on a business between sessions? Mr. Eves says, after reflection: "Yes. It is the position of the government, looking at parliamentary assistants as a whole, that the public interest will be served if they are obliged under sections 2, 3 and 4 and they should not be

prohibited from carrying on another business or earning another income." Interesting question.

Mr. Chairman: We have some members here who are parliamentary assistants, and I would not want them to think they have a conflict of interest by commenting on this. Does anybody else want to comment on it? Mr. Breaugh and then Mr. Cordiano.

Mr. Breaugh: I think you are going to have to deal with it, I wish perhaps otherwise. I do think that the great problem here is that a variety of premiers whom I have watched now have dealt with the parliamentary assistant concept in a different way. Some have decided that a parliamentary assistant is a junior minister and functions in that way. If we are to continue to allow a Premier that kind of latitude and the cabinet that kind of latitude, particularly on this section of the bill, I think you have to say that for all intents and purposes, that they have access to what the cabinet does or they could have; that they function as a cabinet minister does or they could.

If you want to distinguish them out in some other way--and perhaps a preferable way could be found than to do it by amendments of this nature under this section, OK--but somehow you must grapple with that. There is no denying that in my experience here I have seen a number of parliamentary assistants who did what a cabinet minister does to every degree: to participation in cabinet discussion, to the letting of contracts, to carrying on the business of cabinet, to carrying legislation. That has always been the practice in this House. That is a freedom which the Premier has when he decides who will be in the cabinet, who will be a parliamentary assistant and what other assignments are made.

I do not believe you can deny that. You may argue that you do not want to prohibit them from having some outside source of income. I have no problem with that, except in the general way that I believe that members ought to be paid enough that they really do not need to. Again, I think it is one of those things where you kind of get caught here. Each time you make a distinction among the members you really complicate the process.

I do not know that this is the ideal answer but I do know this. If you decide as a government that you will not accept an amendment of this nature, you are simply inviting an allegation against some parliamentary assistant--it may be somebody in this room or maybe not--who is going to get nailed right to the wall. It is going to happen. You might escape the wrath of the world on this particular section, but sooner or later you will have to deal with that. I suggest to you that this an appropriate place to start that. If you can think of a better way to do it, I am certainly open to hearing that.

If you did not, for example, and you had someone who is now a parliamentary assistant who quit the Legislature, went to work in the outside world and next fall came back to the halls of power here and simply talked to all those people they met in their course of duty as a parliamentary assistant; the allegations of a conflict would come hot and heavy. It would be no good to stand up and say, "They were excluded under the act and we decided not to." That is not going to be a defence of any kind at all.

Somewhere or other, you are going to have to deal with parliamentary assistants as something other than ordinary members. I believe that this section, with this amendment, is about as good a place to start as I can think of.

Hon. Mr. Scott: Can I make a suggestion? It may not be satisfactory to Mr. Eves. Hearing the debate, it occurs to me that there may be some justification for distinguishing between section 7 and section 6. Let me deal with it this way. A parliamentary assistant is obliged, under the present bill, to do everything a minister is obliged to do with respect to this bill. If he has a conflict of interest, he is obliged to declare it and refuse to participate in whatever event. If he has insider information, he is prevented from using it. He is prevented from using his influence, which insider information gives him, to effect a result. He has to govern himself in that sense exactly like a cabinet minister.

I presume Mr. Eves's point, if he were focusing only on section 6, is that if you are a parliamentary assistant and you cease to be a parliamentary assistant and go out, you should bear the 12-month no-lobbying standard. I would be delighted to review that if the committee would permit me, and proceed to section 7 where the question is raised much more directly. I think the government would find it impossible to include "parliamentary assistant" in section 7, but we may be able to find a way to modify section 6 so that a parliamentary assistant has that additional disability, that he cannot contract or lobby after he goes out of office.

Mr. Cordiano: Very briefly, I made some remarks with respect to this last week and I want to revisit those remarks because I think I want to reiterate them, actually to put it another way.

I use the example that if the government--again, God forbid--should change hands to another party and you have a former member who was a very prominent critic of the opposition party who no longer stands for office and goes out into the private sector and suddenly becomes a lobbyist, and his party is now in power, he does have effective access to his former colleagues who may be in the cabinet. The majority of them probably will be.

How do you distinguish between that kind of influence, of a member who was a private member, and a parliamentary assistant or a member of the executive council? Theoretically, it could happen down the road. That is the difficulty I have with including parliamentary assistants only. If you are going to draw the line, I think trying to draw the line at the executive council makes some logical sense, but if you are going to go one step further, then you have to have the whole kit and caboodle. If you are going to do it with respect to someone's ability to lobby, that is the difficulty I have with that section.

Mr. Chairman: Let us hear from the various people and then have the Attorney General respond.

Mrs. Sullivan: I think the Attorney General has made the point I was going to make. Basically, I think that sections 6 and 7 really do have to be treated in very different ways. In one case we are talking about somebody who was and in another case we are talking about somebody who is, and whether indeed we are going to cease to view the parliamentary assistant as a member only or as the equivalent of a minister, given the obligations of ministerial responsibility, which are not the obligations of a parliamentary assistant.

So if the Attorney General can come back with perhaps some recommendations with regard to section 6, I would be interested in looking at them. I have great hesitation about the proposed amendments to section 7, though.

1620

Mr. Polsinelli: I cannot support the amendments to section 7. I think I agree wholeheartedly with the Attorney General on that.

With respect to the amendments to section 6, I agree with my colleague Mr. Cordiano that if we are going to be looking at the inclusion of parliamentary assistants, we should also look at the inclusion of critics from the opposition parties, and I would even go so far as including committee chairmen.

Many of us recall that rather pleasant experience in the last session when members of the now official opposition, particularly those who were opposition critics at the time, were very influential in shaping certain government policy. I can accept that if they are concerned--

Mr. Breaugh: Those were the good old days, by gum.

Mr. Polsinelli: --if they are concerned about the impact, the influence that former parliamentary assistants, former members of this assembly may have in terms of influencing the awarding of future government contracts, I think it is only fair that we look at all possible individuals who are members of this assembly and may have that potential to influence.

So I would say that if we are looking at parliamentary assistants, let us also look at opposition critics, let us also look at committee chairmen--

Mr. Morin: Speaker, Deputy Speaker.

Mr. Polsinelli: Speaker, Deputy Speaker, exactly. These are all people who come into contact with a lot of people when they are in a position of responsibility. I think that if the Attorney General is looking at that, he should look also at these people.

Mr. Chairman: You may want to look at their pets, too.

Interjections.

Mr. Eves: I would certainly agree and be prepared to stand down section 6 if the Attorney General and his ministry would care to consider that section and perhaps come up with some other language that might be acceptable to the majority of the members of the committee. I guess to add anything further is almost redundant at this point.

Going on with the more basic issue, as opposed to just section 6, I guess it depends where you are coming from with respect to parliamentary assistants. Where I am coming from is that I regard a parliamentary assistant at least as having the potential of being a junior minister of the crown. I think some have been treated that way in the past and undoubtedly some will be treated that way in the future. In fact, it has always been my belief that perhaps the term "parliamentary assistant" is a misnomer and there should be fewer of such animals around Queen's Park at the Legislature, but they should be given the status of junior ministers of the crown as opposed to parliamentary assistants.

With respect to the comments that have come from some of the members of the committee with respect to critics and committee chairmen, I can tell you that, having chaired about five or six committees of the Legislature, having

been a critic of five or six different portfolios now in my brief tenure as an opposition member, having been a parliamentary assistant and a minister of the crown, if any of them think that a chairman of a committee or a critic in an opposition party has anywhere near the clout, the access to inside information and the decision-making that a parliamentary assistant has, someday if they are so unfortunate as to find themselves in opposition, they are in for a rude awakening.

Hon. Mr. Scott: If it is the committee's will, we will stand down section 6. But let me tell you, I think Mr. Cordiano makes an interesting point. You have got to have a dividing line somewhere under section 6. It can be cabinet minister, it can be parliamentary assistant, it can be member.

Now, I can tell you frankly from my own experience that when we were elected in 1985 there were one or two members in our previous caucus who either were not elected or who did not run and who were around.

Mr. Breaugh: And still are.

Hon. Mr. Scott: And if, for example, there were an election tomorrow and, heaven forbid, the Conservatives were returned to office but Mr. Eves was defeated, I believe there would be a good argument for saying that Mr. Eves should not be permitted to lobby for a contract for his client within 12 months. So it may well be that if you are going to make a change in the government bill with respect to section 6, the appropriate anti-lobbying provision should be imposed on all members who go out.

Mr. Breaugh: Provided, of course, you could find out who the lobbyists were.

Hon. Mr. Scott: You can. But, for example, if a member of the government party goes out and a parliamentary assistant of the government party goes out, why should they be treated differently in terms of lobbying for a contract from the executive council? I would presume they should be treated the same way. A member of the government party who goes out and who has been the Deputy Speaker or the chairman of an important committee, indeed may be regarded as a more significant figure to the executive council, so it may be that we will want to look at putting the obligations under section 6 on all members, but we will come back to that if the committee will permit, perhaps tomorrow.

Mrs. Sullivan: I have one question on this section, and I am just not certain if I have forgotten, but does this section, the whole of section 6, disallow a former member of the executive council to serve, for instance, as chairman of an agency?

Hon. Mr. Scott: No. If you look at subsection 6(2), you will find that exception is designed to deal with that. I can tell you, when the time comes, just while we are at it, that we have in our package an amendment to subsection 3, which would extend that protection to clauses (a), (b) and (c), so there will be no doubt that an ex-parliamentary assistant, ex-cabinet minister can continue to advance the interests of his constituents as an ordinary member could do, in terms of getting contracts for them.

Mr. Chairman: I think what we will do, rather than move on to section 7—it is 4:27 of the clock right now and it was agreed that we would recess at 4:30, so why do we not just leave it at section 6 right now, adjourn and come back tomorrow at two o'clock sharp?

The committee adjourned at 4:28 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
MEMBERS' CONFLICT OF INTEREST ACT
TUESDAY, JANUARY 19, 1988



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)
VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Faubert, Frank (Scarborough-Ellesmere L)
Johnson, Jack (Wellington PC)
McClelland, Carman (Brampton North L)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)
Sullivan, Barbara (Halton Centre L)
Swart, Mel (Welland-Thorold NDP)

Substitutions:

Eves, Ernie L. (Parry Sound PC) for Mr. Sterling
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel
Klein, Susan, Legislative Counsel

Witness:

From the Ministry of the Attorney General:

Scott, Hon. Ian G., Attorney General (St. George-St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, January 19, 1987

The committee met at 2:23 p.m. in room 230.

ORGANIZATION

Mr. Chairman: I call this committee meeting to order. There are a couple of things I would like to discuss. I just want to ask the committee members now whether, during the week of February 8 when we come back for a week, we want to discuss the Office of the Legislative Assembly estimates. We have a session there, if we want it, on Wednesday afternoon, from 3:30 p.m. until 6 p.m. It might be an opportune time to discuss or dispense with the estimates for the Legislative Assembly. If the committee members are prepared to do that, then we can put it on the agenda. Is there any opposition to that? Let us put that on--

Mr. Breaugh: I do not think we are going to be through with this bill by then.

Mr. Chairman: On condition we are finished with this bill.

Second, I have a request from Larry Kent, director, information services, Ministry of Intergovernmental Affairs. It is with regard to the multifait service of Thanksgiving which is to be held on Sunday, February 14. They want to use the transponder, so we have a request to use the transponder. We are trying to get TVOntario to get all the necessary information together. They are prepared to come before this committee. It is the multifait service of Thanksgiving. The Governor General would be there and probably other top dignitaries. They want to use the transponder.

I am not asking you to make a decision now because you do not have all the information, but what I am thinking is that TVOntario and Larry Kent, who is making the request, are prepared to come before us tomorrow. If that is the case, when do you think might be the best time for them to come before us, at two o'clock in the afternoon or do you want to deal with Bill 1 until four o'clock and then have them come at four o'clock? I would just as soon have them come at two o'clock, deal with it, get it out of the way and then deal with the bill, but it is really immaterial.

Mr. J. M. Johnson: Does the Attorney General (Mr. Scott) have a meeting in the free trade committee at 11 o'clock tomorrow?

Hon. Mr. Scott: I do not know the answer to that. The way things are going, I will be told at about five to 11, Mr. Johnson.

Mr. J. M. Johnson: I did see a committee agenda that the AG was to appear in that committee at 11 o'clock. I assumed you would not be here. Would that be an appropriate time to talk about this?

Hon. Mr. Scott: We can find out.

Apparently, I am supposed to be there. Thank you for telling me. You are looking after me well.

Mr. J. M. Johnson: Would that be an appropriate time to discuss this other matter?

Mr. Chairman: Is it fair for the executive assistant to the minister to be sitting as a member of this committee?

Hon. Mr. Scott: Mr. Johnson is my member of the Legislature, so I expect him to do these things for me. I have high expectations for the elected member of my riding.

Mr. Breagh: Do you have him on retainer?

Mr. Chairman: I wonder whether the clerk would find out for us whether it would be appropriate for Mr. Kent and the others to come before the committee at 11 o'clock tomorrow. We could then deal with the bill. If that is the case, if we cannot meet for an hour, would the committee members care to meet any earlier tomorrow to start discussing Bill 1?

Mr. Breagh: No.

Mr. Chairman: I am just throwing it out as a possibility.

Mr. Breagh: I am just throwing it back as an answer.

Mr. Eves: My only concern is that we try to wrap up the bill by tomorrow, if possible. I am available to start early, sit later or whatever.

Mr. Breagh: I have been sitting here for half an hour. The committee was scheduled to start at 2 p.m. It is getting close to 2:30 p.m. You are not going to make me sit around today and come in early tomorrow and sit around for another hour. The committee starts at 10; we will be here at 10; we will start at 10 and we will go as long as we can tomorrow until about four or 4:30 and see if we can process the bill, but I would not like to put our track record on the line here as we have not really done anything with it yet.

Mr. Chairman: At 11 o'clock tomorrow, with the agreement of the committee, we will hear Mr. Kent and the people accompanying Mr. Kent, TVOntario and so forth. Then we will start again at two o'clock tomorrow but we will also be here at 10 o'clock to deal with the bill. Maybe we can start dealing with Bill 1 at 10 o'clock sharp.

MEMBERS' CONFLICT OF INTEREST ACT

(continued)

LOI SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE

(suite)

Consideration of Bill 1, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 1, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Section/article 5:

Hon. Mr. Scott: If we are now reverting to Bill 1, can I just assess where I think we are at. Yesterday, when we were dealing with section 5, both

the New Democratic Party and the Conservatives had amendments, slightly different in form, which were aimed at giving the commissioner the power to sell or to direct the disposition of a gift that had either been illegally received and the existence of which was ascertained or that had been legally received under section 2, but for which a declaration had been made under section 3.

I was asked if I could try to put those two amendments together. That has been done and I think legislative counsel is in a position now to circulate an amendment which I think will reflect the discussion that everybody had. If you will take your time in looking at it, perhaps we will be able some time, either today or tomorrow, to pass section 5.

Interjection: We do not have copies yet. We are just making a few little changes.

Hon. Mr. Scott: It is being copied and there is another little change that has to be made. Perhaps I can read it to you in case you have any questions. It says that section 5 of the bill would be amended by adding a new subsection 4 which says:

"(4) The commissioner may direct a member,

"(a) to dispose of a fee, gift or personal benefit whose acceptance in the commissioner's opinion contravenes subsection 1;

"(b) to dispose of a gift or personal benefit that is required to be the subject of a disclosure statement filed under subsection (3).

"(5) The direction shall be in writing and may specify the manner in which the member is to dispose of the fee, gift or personal benefit.

"(6) The member shall comply with the direction."

I think that incorporates what Mr. Eves had in mind and what Mr. Breaugh had in mind. It goes without saying that we are not authorizing the commissioner to direct the disposition of a gift or benefit which has been consumed or otherwise dealt with already. If he finds that has happened, it will be a matter for him as to whether, upon complaint, he issues a reprimand or whatever in respect of that gift.

Interjection: What you have read is not exactly--

Hon. Mr. Scott: I am now told that the words I read are not exactly the words you will be getting, but they are pretty close.

Mr. Breaugh: But sooner or later we will be allowed to see it.

Hon. Mr. Scott: As soon as legislative counsel has copies, Mr. Breaugh, I am not going to prevent you from looking at this.

1430

Section/article 6:

Hon. Mr. Scott: On the assumption that this may deal with the roadblock at section 5, can I now turn to section 6, where we had an interesting discussion yesterday, as I recall it, which involved Mr. Eves's

suggestion that parliamentary assistants should be included in this provision which, substantially, is designed to prevent a way--

Interjection.

Hon. Mr. Scott: Section 6, as you will recall, has to do with the lobbying of a former minister, if we can use that language. It is designed to prevent a former minister from seeking and obtaining from the cabinet a grant of a contract or benefit until 12 months have elapsed when he ceased to be a cabinet minister. Mr. Eves's proposal was to add "parliamentary assistant" to that.

What I would like to suggest to the committee is that you might want to give consideration to applying section 6 to all members of the Legislature. It seems to me there is no reason of principle why that should not be done. I presume what we are seeking to do here is to insulate a former person, that is a former member of the House, from the sense that the public may have that because of his membership in the House he has an advantage obtaining contracts, either for himself or for clients. The proposal that I had stopped at cabinet ministers, but if we are going to go further, it seems to me you might go to all members.

I can recall a member of the official opposition before 1985, who in the 12-month period following the momentous events of May 1985, may have created the impression that he had an opportunity to assist people who wanted to get contracts from the new government. He was just a former member. He had never been in a cabinet. But, if we are dealing with perceptions here, it seems to me it might apply to all members. If the committee does not like that, I would be content to leave it at cabinet ministers.

Mr. Breaugh: Just on the two items that the Attorney General has raised, I thought overnight considerably about our discussions on section 5. I appreciate the response that he has given as being one which is an attempt to gather a consensus. I am really wondering now, is it worth it. Is there anything of any substance, any practice any of us are aware of, that warrants setting up a big deal mechanism of definitions and recording and disclosing and getting rid of? I am not convinced in my own mind that we have established in the first place that there is a major problem there.

Second, are we really doing anything of any value? I think we ought to say it is not right for a member to take additional payment for doing what a member is supposed to do, and leave it there. Are we really interested in establishing a lot of disclosures over what some group or organization gave you as a present? Are we interested in whether the Attorney General of Ontario received a Minolta camera and whether he should keep it or not, to use the example he used yesterday? I really do not think so. I do not care whether the camera is worth \$200, \$300 or \$1,000.

But if it was a big problem that members of the assembly in Ontario were getting trips to Jamaica regularly and that was seen by all of us as being improper and it was done enough that it was worth doing something about, I would feel more disposed towards writing this section of the act in that way.

We began with a problem that does not exist but might exist. Now we are into six different subsections of the same section and a fairly elaborate process is beginning to evolve to solve a problem which does not exist. I would like to think about that for today and perhaps come back to it tomorrow. I will tell you right now, I am at the point where I think we ought to say

flat out that members should not get paid for what a member is supposed to do anyway. He should not get extra payment. Forget about the gifts and personal benefit and all of that, because I think the process is beginning to overwhelm the nonexistent problem.

Hon. Mr. Scott: Let me say, so that committee members, when they are taking the time to think about it, will have the other side. Mr. Breaugh says we should just have a section that says that members should not be paid for doing what they are doing anyway, which I take to be voting, discussing and putting forward proposals. That is essentially what section 5 says right now: "A member shall not accept a fee."

One of the problems is that a "fee" is a word that describes dollars received in hand. We are all familiar with examples, happily, no doubt, not in this Legislature, where that kind of language has been circumvented by taking the fee in kind. It ceases to be a fee; it becomes a gift or it becomes a personal benefit where you do not get anything at all; you just get free service at a hotel or wherever.

If you are going to prohibit the taking of a fee--and I share with you that should be done--you are inevitably led to expand it to cover the strategies that less than honourable people, none of us included, have regularly and routinely in history used to get around the prohibition against a fee. Now, when you are saying to members that they shall not take a fee, gift or personal benefit, we have said that. That is what section 1 says.

Then the trouble with that is that there are some fees, gifts and benefits that are so trivial that you would embarrass your host by turning them down and which, in a sense, you are perhaps entitled to have. If you make a speech and someone gives you a gift, why should you not have the gift? So we say, "All right, we will except from that fee, gift or personal benefit, something small." That is what we are trying to do.

"Small" is not a legislators' word. A small increase in a benefit plan is regarded as a trivial increase by one party and a major increase by another. So "small" is not a good word. What we say is you can receive a gift if it is traditional that it goes with the service you have provided. Making a speech out there is one of your functions as a legislator, but you can receive a gift for it if it is small.

We have defined "small" at \$200 and said if you get one bigger that you cannot return because it would cause an embarrassment, you will just tell the commissioner you got it and he will tell you what to do with it.

Almost every conflict-of-interest law has a section like this. I guess, Mr. Breaugh, the point I am making is that I start out with you from the same starting point, that members should not be paid a fee for doing what they normally do, voting, discussing, proposing, but you cannot stop there, because as soon as you have said that, you are saying, "What about benefits in place of gifts? Or gifts in place of fees?" You add that in. Then you say, "What about tiny things?" and you end up with something that looks very like our proposed section 5.

I simply put that as the other side, when you come to think about this.

Mr. Breaugh: Upon reflection, my problem is, what we have wound up doing here is saying, "The price you can accept is \$199.99." So we are not arguing what we are any more, we are arguing over price. I am a little reluctant to get into that.

Hon. Mr. Scott: You cannot accept a gift of \$199; you cannot accept any gift unless social obligation, in effect, mandates it. Then, if it is under \$200, you can just stow it away.

Mr. Breaugh: Yes, but we are setting up the gift police now. Somebody is going to have to police the action. Somebody will investigate it. I am always opposed to the idea--for example, somebody might get a gift worth \$210. We will probably spend \$4,000 determining whether the gift was properly declared, disposed of or whatever.

I am not sure this makes a lot of sense. I am just expressing my reservations that maybe what we should be doing is the simple, clear thing: Tell folks they are not supposed to get paid extra amounts of money for doing what they get paid to do as legislators. That is it.

Hon. Mr. Scott: "NDP Seeks to Narrow Conflict Law for Opposition Members." Headline.

Mr. Breaugh: "NDP Seeks to Provide a Law that Somebody in this World Could Actually Understand and Perhaps Obey Without a Multitude of Gift Police."

Hon. Mr. Scott: Well, we have put both sides of that case.

Mr. Breaugh: The gift police will be right in there with the smoke police--a special branch of the Canadian Security Intelligence Service.

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The Vice-Chairman: Mr. McClelland?

Mr. McClelland: No, thank you.

The Vice-Chairman: Mr. Faubert?

Mr. Faubert: Mine was on section 6. I thought we had moved to section 6.

Mr. Breaugh: Yes. Let me make some comments on section 6--

Mr. Faubert: Mr. Chairman, just on a point of order: I thought you had moved to section 6, and I indicated I had a question on section 6; then Mr. Breaugh introduced discussion to section 5 again. Have we resolved section 5?

The Vice-Chairman: We are on section 6.

Hon. Mr. Scott: But I take it that we are waiting for the text of the amendment to section 5. Mr. Breaugh said that he wants to have a general thought about it, that was it and he still wants to think about it.

Interjection.

The Vice-Chairman: Are you on section 6 or section 5? I am sorry, I have to interrupt you. Mr. Eves on section 5.

Mr. Eves: With respect to section 5, I am obviously going to look at the amendment suggested by the Attorney General as read, but from what I have heard, it satisfies the concern that was enunciated by Mr. Breaugh yesterday

and certainly it satisfies my concern. I think it is a fairly decent amendment, and I think it improves the legislation.

The Vice-Chairman: Now we are talking about section 6.

Mr. Faubert: I want a point of clarification on clause 6(1)(a) where it says "until 12 months have expired after the date when the former member ceased to hold office." I take it that is any elected office; that is not when a cabinet minister is no longer a cabinet minister but is a private member, or a parliamentary assistant is no longer a PA or anyone that applies to. Is that correct?

Hon. Mr. Scott: Section 6, which you have in front of you, applies only to cabinet ministers, so the office referred to is the Cabinet Office. If a member left cabinet but retained his seat, the 12 months would begin to run from when he left cabinet. You will remember that we put in a section 4a, which says nothing in this act prevents a member from doing what members normally do for their constituents. If we had two or three members of our cabinet who left cabinet and remained members, they would not be entitled to go to cabinet for a contract.

Mr. Faubert: But under the existing legislation they would not be allowed to have a contract anyway, would they?

Hon. Mr. Scott: All right, that is fine, but section 6 imposes an obligation on cabinet not to grant this to them. This speaks to cabinet's duty, confronted by an ex-cabinet minister, within the House or without, who seeks a contract or benefit for himself or in effect a client. I hasten to add that will not prevent anybody from doing what members normally do, which is to advance the case that, "We need something new in our constituency or in some other constituency."

Mr. Faubert: In my reading of this, I felt that it really applied to people who had left the government altogether and were no longer sitting as members of the Legislature, that it was an attempt to prevent them from coming back and seeking--

Interjection.

Mr. Faubert: Pardon? Is that not the reason for--

Hon. Mr. Scott: Let us take Mr. Ruprecht, who has left cabinet.

[Laughter]

Hon. Mr. Scott: He is just an example, and there are others.

The Vice-Chairman: Order, please.

Hon. Mr. Scott: First of all, Mr. Ruprecht's right as a member to lobby for constituents, whether in his riding or not, to do the things a member normally will do, remains unimpaired; that is section 4a.

Clause 6(1)(a) says the cabinet shall not award or approve a contract with or grant a benefit to him until 12 months have gone by. You correctly point out that he might not be able to receive one anyway, but the obligation is not imposed on him; it is imposed on the cabinet.

Clause 6(1)(b) says it will not approve a contract in which Mr. Ruprecht has made a representation, even though he is not the beneficiary of the cabinet.

Mr. Eves: With respect to section 6, my comment is basically the same as it was yesterday and I do not think we have to prolong that discussion. If we are going to stand this down as well, that is fine with me. We are certainly prepared to look at the amendment or the language that the Attorney General is suggesting.

Hon. Mr. Scott: I have not prepared an amendment yet. What I have simply done is put on the floor for discussion a third alternative, which is that section 6 should apply to all members who leave office and, in that case, it would be who leave the Legislature. So we have all the alternatives before you.

Frankly, I would have thought if you were looking for a principle, presumably the principle is a scheme that would give the public a certain kind of assurance that someone who had a public office did not get an advantage in dealing with cabinet when he left that office. That perception applies not merely to ex-cabinet ministers; it presumably applies to parliamentary assistants, as Mr. Eves has already noted, and to ordinary members.

I give an unnamed example of a member of the Liberal caucus before 1985 who was perhaps perceived by the public as having some kind of advantage because his former House colleagues had become the government.

Mr. Breaugh: (Inaudible).

Hon. Mr. Scott: No, I am not thinking of any of those people. The person I am talking about has since died.

Mr. Chairman: That is the consequence.

Hon. Mr. Scott: That is the penalty.

Mr. Eves: (Inaudible) recognizing the fact that former members of the executive council had some extra inroads, if you will, because of their contact in having been members of the executive council. That is why the section--correct me if I am wrong--was drafted. Otherwise, why was it not drafted the other way in the first place? Is that the principle?

Hon. Mr. Scott: I understand your point. You make the point that clearly ex-cabinet ministers are perceived as having this advantage, and I accept that. You go on to say, "Maybe parliamentary assistants are perceived as having this advantage." I am saying if we are being consistent, maybe members of the government party are perceived by their constituents as having this advantage.

I am simply saying, for the purposes of discussion, if we are approaching the issue as one designed to scupper one side or the other, we can take any line we want, but if we are approaching the thing as a measure of principle with which we are going to have to live, I would have thought the insulation period should apply to everybody.

Mr. Eves: We are certainly prepared to look at that, but I still denote the difference, and there is a substantial difference in my opinion, between members of the executive council and ordinary members--

Hon. Mr. Scott: Yes, I agree with that.

Mr. Eves:--and a degree of difference between parliamentary assistants and ordinary members.

Hon. Mr. Scott: But we are talking in all these cases of differences of degree.

Mr. Eves: That is true.

Hon. Mr. Scott: I am saying if you are going to have a principled response, you would say, "Anybody who has been in the Legislature may potentially, upon leaving the Legislature, have an advantage in lobbying his colleagues for a contract."

Mr. Eves: That is possible.

Hon. Mr. Scott: I can think of even some opposition members now who may have got contracts after the 1987 election. Certainly some are seeking them, if the reports from the north are correct.

Mrs. Sullivan: I just wonder if it might be appropriate in considering this question also to be looking at section 17. Section 6 implies the obligation on the executive council not to make the awards, but section 17, if it is changed, for instance, to members of the House, puts an obligation on that person. It seems to me that we could certainly deal with everything except perhaps the penalty section at the same time in those two.

Hon. Mr. Scott: As Mrs. Sullivan points out, section 17 is there as the opposite side of section 6. Section 6 imposes the obligation on the cabinet not to deal with an ex-cabinet minister within 12 months. You say, "If they did, all the members of the cabinet get into trouble on the conflicts of interest, and the guy who went to them to pitch for the contract goes home free." So section 17 is put in, and that would apply to whoever is covered by section 6. If you are going to seek a benefit and the people who give it to you are in trouble, it seems to me you should be in trouble yourself.

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Mr. Breaugh: Again, the difficulty I have with this approach is that it is such a convoluted approach to the problem as almost to defy a clear understanding of what the law means. The weasel clauses are here. You have tried to cover both sides, and I see that.

I think what we are caught on here, rather firmly, is one more example that it is very hard to write a law which applies to some members but not to others. You go through all of the combinations, and the bottom line that you would do with this portion of the act, these two sections that are tied together, is that you would promptly take about three or four former members whom I am aware of, who are now working in the private sector--consulting, advising, lobbying, whatever it is they do--and throw them out of work. I am not aware that they have done anything untoward, but the law would basically wreck their newly found careers.

Hon. Mr. Scott: Except that they have been out more than 12 months, have they not?

Mr. Breaugh: Well, some have, some have not.

Mr. Cordiano: It would not apply to them.

Mr. Breaugh: Well, it does apply to them. Now you see, my difficulty with this is that these two sections of the act have their inherent weasel clauses. They also have missing ingredients. If we are to regulate, in effect, say that these people cannot lobby and we have no registration of lobbyists, all they will become is consultants, which is the current in phrase for these folks.

They are all former members of various cabinets. They are ensconced in Ottawa, Toronto and Halifax and they are advising the private sector. People are now writing major magazine articles about precisely how they advise the private sector. It seems to me in my reading of it that their basic job is giving parties and introductions, sending cards to folks, telephoning people and writing letters on someone's behalf.

Now, all of this becomes totally impractical if we do not have some registration process at work to identify that they are, in fact, working as lobbyists and to begin the process of fleshing out that definition so that we understand the process. It seems to me that in this position you can fiddle with this all you want, but the people I know who are former members of a cabinet who are working in the private sector will simply say: "Well, of course, I personally did not lobby anybody. I personally did not attend a cabinet meeting and seek a contract for my friends. I simply advised my friends whom to go to see, and then I introduced them."

Hon. Mr. Scott: Well, lobbyist law would not catch them.

Mr. Breaugh: No.

Hon. Mr. Scott: No, I am saying your remedy, which is a lobbyist law, would not catch those people, because they are not acting as lobbyists.

Mr. Breaugh: Well, they would say that they are not acting as lobbyists--

Hon. Mr. Scott: And they would not be.

Mr. Breaugh: --just as I suspect under here they would say, "I didn't do any of that."

Hon. Mr. Scott: It seems to me we are confusing two purposes. The purposes of having a lobbyist law in which there is a register, with which I have a great deal of sympathy, is to identify the people you want to prevent the government from dealing with or get the government to take care in dealing with, to identify those people or, as you would say, identify those folks.

Under section 6 we have identified the people we are talking about. We are talking about ex-members or ex-cabinet ministers. Once you have identified them, the next question becomes, what is not going to happen with those people?

We are very clear under this. There are no weasel words. We are very clear about what is not going to happen. During the first 12 months, they are not going to be able to get a contract for themselves, and no contract will be let if they have made a representation.

Now, that does not take care of the whole lobbyist problem, but it takes care of the role of former members, and in the speeches in the House I hear

people saying that we should have a rule about what former cabinet ministers are allowed to do, what former parliamentary assistants are required to do.

I am saying that if it is a question of principle, we should have a law about what former members are entitled to do. That is what the amendments to section 6 would do, and I am simply asking you to guide me in helping form the government position. Do you want this restricted to cabinet ministers or would you like it to apply to all members?

Mr. Breaugh: I think, in truth, we are coming closer to the recognition that you cannot write a conflict-of-interest law that applies only to some members and not to others. If you are going to do what has to be done here, the corollary is, of course, that you are going to have to provide people with enough income that they are not interested in working outside the Legislature.

Hon. Mr. Scott: Unfortunately, I have no authority to deal with the corollary at the moment, but we have come very close, absent section 7, to developing a conflict-of-interest law and a disclosure law that does govern all members equally.

You will remember when that was proposed it was thought to be a venomous plot by the government to impose on others obligations that should only be on itself. But I think you are absolutely right. When you begin to examine the exercise, it becomes apparent that all members, some more than others because of their role or place or party, have advantages which create perceptual difficulties for ordinary people. That is what we are trying to deal with.

I would be interested in whether you would prefer that section 6 apply to all members or just cabinet ministers. I do not see any justification, frankly, for taking it beyond cabinet ministers to parliamentary assistants, because then you would ask, "How about the Speaker or the Deputy Speaker or the other major officeholders of the assembly?" So you either stop at the cabinet ministers, on the basis that is going to be where most of the difficulties are, or you go the whole hog and apply it to all members, as a question of principle. The government has not decided. We would like to hear your views, if those are the choices.

Mr. Chairman: Do members have any particular view on this? Do you want it to extend to all members or do you want to limit it to the cabinet?

Hon. Mr. Scott: This is what consensus is all about. I would like to know what the other parties would like so we can develop a consensus document, at least on section 6.

Mr. Chairman: I gather the Attorney General is saying that if you are going to extend it to parliamentary assistants, you are going to extend it to all members of the Legislature.

Mr. Cordiano: We should hear from the opposition now.

Mr. Breaugh: You just did.

Mr. Eves: I am quite happy to speak on that. I understand exactly what the Attorney General is saying: "It is my way or the doorway and we'll use our six members on the committee to shove it down your throat."

I would perfectly agree with the proposal to extend it to all members,

as soon as all members are paid equally, all members have access to the same documentation and all members are permitted to attend cabinet meetings and participate in decision-making. Then all members, for sure, should be treated equally. That is quite correct.

Maybe it is about time the government looked at doing something about that. If you are sitting here telling me that there is no difference between the amount of information and decision-making ability of a cabinet minister and an ordinary member, then you are not living in the real world.

Mr. Cordiano: That is not the point.

Mr. Eves: That is exactly the point. That is exactly why subsection 6(1) is drafted by your government the way it is drafted, because the government recognizes that difference. That is why it refers to members of the executive council. All I am doing with my proposed amendment is trying to include what I regard--we had this discussion yesterday--as junior cabinet ministers in that.

Mr. Morin: They are not paid the same.

Mr. Eves: That is true. Maybe you should pay all the members at the same rate as parliamentary assistants then. If you want to get right down to it, maybe we should have all the access to the same information that all parliamentary assistants do. It is a question of degree. There is no doubt about that.

But I take with a grain of salt the Attorney General's comment that what we are dealing with here is a principle, because if that is what the principle was behind this section, the section would be worded to say "member" in the first place; it would not say "a member of the executive council."

Mr. Cordiano: No, therein lies the fundamental difference. Could I just respond to that, Mr. Chairman?

Mr. Chairman: Are you finished, Mr. Eves?

Mr. Eves: I am finished for the time being.

Mr. Cordiano: Therein lies the fundamental difference. Certainly, there was a line drawn at the executive council, and I think there is a very good reason for that. As you have pointed out, it is a question of degree.

Now what you are simply saying is, "Let's draw the line a little further and a little further." What you want is the line drawn where you want it drawn. I brought this up in the first place and said it is inconsistent. There has to be a very clear demarcation, and I think the clearest one is at the executive council, quite frankly. But if you are going to go beyond that, then certainly you could draw the line at all kinds of places, and that is what we are doing here. It is just a question of degree. How far do you go?

Hon. Mr. Scott: (Inaudible).

Mr. Breaugh: We have a solution.

Mr. Eves: I really think that we had this debate for a few hours last week, a few hours yesterday, a few moments today. We may as well move the amendments, vote on them and get on with the rest of our lives. We could be

back here the second week of February debating it too, if you want.

Mr. Chairman: Let us deal with this matter. We have an amendment before us.

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Mr. Cordiano: Could we hear from Mr. Breaugh?

Mr. Chairman: Mr. Breaugh can speak for himself.

Let us deal with the amendment, the Progressive Conservative motion, which--

Hon. Mr. Scott: Are we dealing with section 6?

Mr. Chairman: Yes.

Hon. Mr. Scott: The government's position is that it would be prepared to consider going to all members, but if there is no consensus for that, we prefer that the bill in its present form should be adopted.

Mr. Polsinelli: I have an amendment to subsection 6(3).

Mr. Chairman: Let us vote then on subsection 6(1).

Mr. Philip: So that means you are not going to present your amendment.

Hon. Mr. Scott: Not unless there is any consensus to support it.

Mr. Chairman: We have an amendment to subsection 6(1). Is that correct, Mr. Eves? I understand your amendment is to subsection 6(1). I just want to make sure.

All those in favour of the amendment on subsection 6(1) that Mr. Eves has put, which includes 6(1)(a), 6(1)(b) and 6(1)(c)? All those opposed?

Motion negatived.

La motion est rejetée.

Mr. Eves: With respect to subsection 6(1), if the Attorney General and the government are so inclined to move an amendment, we are certainly prepared to vote on it.

Mr. Chairman: OK. Shall subsection 6(1) carry?

Mr. Breaugh: You have some other amendments that are proposed. I am not clear on how many the Conservative caucus has prepared.

Mr. Chairman: Do you have some other amendments on subsection 6(1)?

Mr. Philip: How do you move subsection 6(1) without moving section 5 first?

Mr. Chairman: We postponed section 5. We just approved subsection 6(1).

Mr. Breaugh: No, we did not. We just voted on an amendment that was proposed to subsection 6(1). That does not carry the section. There are other amendments to this section, which I have in my little book here as being proposed. I am unclear as to how many are actually going to be moved. I have a PC motion to subsection 6(3).

Mr. Chairman: Is there amendment to subsection 6(2)? None. Is there amendment to subsection 6(3)?

Mr. Polsinelli: I have a government amendment to subsection 6(3).

Hon. Mr. Scott: I said before the vote on Mr. Eves's amendment that if there was consensus between the two opposition parties, we would move in another direction. I was told there was not such consensus and, as a result, my party voted to reject Mr. Eves's amendment. Mr. Eves cannot come along now and say: "I have changed my mind. There is consensus." He can say it, but that is not what we were talking about when we approached his amendment.

Mr. Eves: I do not appreciate the fact that the Attorney General is trying to put words in my mouth. I indicated that there is a difference between a parliamentary assistant and an ordinary member.

I am telling you right now that if the Attorney General would care to move the amendment to have the subsection apply to all members, I am certainly prepared to vote in favour of it. I think that is probably better than nothing. I said that there is a difference and I know where I would draw the line. If you want to draw the line to include all members, I am prepared to support that.

Hon. Mr. Scott: Mr. Eves can, of course, make any amendments he wants. I indicated that in place of the government bill, if there was consensus supporting another alternative, the government would take on that motion. There was no consensus announced and, therefore, the government said how it would vote. If Mr. Eves wants to make another motion, I do not see any committee rule that prevents him from doing so. I would like to look for one, but I do not think there is one.

Mr. Eves: I have made a proposed amendment which I thought was appropriate. I have also put on the record that I am prepared to support an amendment, if the Attorney General cares to move it, to have this section apply to all members. I do not think it is the best way of drafting the section but I think perhaps it is better than the way it is drafted now.

Mr. Chairman: OK. We have discussed that point and, hearing no other amendments, let us deal with subsection 6(3), where we have another amendment.

Mr. Polsinelli moves that subsection 6(3) of the bill be struck out and the following substituted therefor:

"(3) Clauses (1)(a), (b) and (c) do not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled."

Mr. Polsinelli propose que le paragraphe 6(3) du projet de loi soit remplacé par ce qui suit:

«(3) Les alinéas (1)a), b) et c) ne s'appliquent pas si les conditions selon lesquelles le contrat ou l'avantage est accordé ou approuvé sont les mêmes pour toutes les personnes y ayant semblablement droit.»

Mr. Polsinelli: If anyone would care for an explanation of that, I am sure the Attorney General would be glad to give one.

Hon. Mr. Scott: The purpose of this, as I understand it, is that it simply extends the exemption that is contained in subsection 6(3), which permits lobbying for certain kinds of contracts to exist in respect of clause 6(1)(c).

Mr. Breaugh: Just to be clear, this is an amendment which I believe was circulated yesterday?

Interjection: Yes.

Mr. Breaugh: OK, because it is not in the package.

Mr. Chairman: Everyone has the amendment in front of him? Do you understand the amendment?

Mr. Breaugh: No. I think we need a little bit of clarification here. As I read it, this is a slight change in the wording, and I am not quite picking up the significance of the change.

Hon. Mr. Scott: Subsection 6(1) prevents the executive council from granting, under (a), a contract to a former member of the cabinet; (b) a contract upon which a former member of the cabinet has made a representation for himself; and (c) a contract upon which a former member of the cabinet has made representations on behalf of others.

Clause 6(1)(c) is designed to permit that representation to be made if it is the kind of contract that would be available for all persons who were similarly entitled. In other words--this is not precisely a contract, and I cannot think of another example--if it were the agricultural tax rebate, which is established in statutory form and which is available to everybody who owns lands that he farms, and we do not believe that a cabinet minister former should be prevented from getting that for himself under clause 6(1)(a) or (b), but we also do not believe that he should be prevented from asking within the first 12 months that it be extended to other people who are entitled merely because he ends up being their spokesman. That is why we put in 6(1)(c). To omit (c) in subsection 6(3) was anomalous.

You see, with subsection 6(3) there, he can get this agricultural land grant contract for himself, because it is available to all people who own land and meet the criteria of the statute. Well, if he can get it for himself under clauses 6(1)(a) and (b), why should he not be able to approach the cabinet to get it for somebody else who is similarly entitled?

Mr. Breaugh: Would this amendment allow, for example, someone to bid on a tender?

Hon. Mr. Scott: No.

Mr. Breaugh: What would it exclude?

Hon. Mr. Scott: Because subsection 6(3) permits the award of a contract or a benefit based on a representation. What we are trying to encapsulate in subsection 6(3) is an arrangement where the entitlement to the benefit or contract is available to a class of people, and what we say is that if the former cabinet minister is making the representation for himself, he can get it, because that is clause 6(1)(a) or (b)--

Mr. Breaugh: Right.

Hon. Mr. Scott: --and if he is making it for persons who are a part of that class, he should not be prevented from doing it. For example, a workers' compensation case would be a case where a cabinet minister was not applying for himself but was applying for consideration of someone in a class of persons where all similarly entitled should get it. Workers' compensation may not be a good example.

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Mr. Breaugh: I have no disagreement with what you are saying, but what is there here that prevents someone from bidding on a tender? It is a public tender. It is open to everybody else. Every other contractor in Ontario has the legal right to bid on that tender. What is there here that prevents a former member of the cabinet, for a 12-month period, from putting a bid in on that?

Hon. Mr. Scott: If there were tender rules that were a matter of statute or regulation that spoke to objective entitlement, I believe there would be nothing here that would prevent a cabinet minister making a tender and running the chance of being the low bidder.

Mr. Breaugh: Exactly.

Hon. Mr. Scott: As long as he does not get any special terms--let us take an example: Let us assume you have a scheme for low-bid tendering. Under clauses (a) and (b), the cabinet minister can apply for himself because it is not a personal contract. He just submits a tender and if he is low, the criteria for the tender decide whether he gets it. If the government ignored the criteria, it would not be available to people similarly entitled. The "similarly entitled" characteristic is a function of the statute or scheme that creates the award.

Mr. Breaugh: Where I am struggling a little bit with this is that I do not see any distinction here. I thought the idea, as I have seen it in other legislation, frankly was that for a 12-month period you cannot do business with that government. You can do business in the sense that every other citizen of the province can. You certainly are not excluded from the Ontario health insurance plan, compensation, tax grants for senior citizens or anything like that, but you cannot actively participate in a normal business relationship with the government.

My problem is that it appears to me that the wording we have here does not exclude that. If a tender is put out, if bids are offered and every other contractor in Ontario has the same right to put in a bid--

Hon. Mr. Scott: No, the same right to win the bid.

Mr. Breaugh: Right, but he or she could do business with the government. You just have to make the argument that everyone else had the same rights as I did and it was fair. I am making the distinction that we are dealing with perceptions here in large measure, but the proposed changes here mean that they can, as long as it is on equal footing with everyone else.

Hon. Mr. Scott: Why should they not?

Mr. Breaugh: Ah, there we are.

Mr. Polsinelli: If the tendering process says that the lowest bid shall not necessarily be accepted, I do not think he--

Hon. Mr. Scott: Then he could not tender because it is not the rule for all persons similarly entitled if the tender bid says the lowest tender will not necessarily be accepted. But if it is a mechanical scheme that is available for all persons who want to enter the starting gate, in that circumstance the winner is not fixed by cabinet.

Mr. Polsinelli: As long as there is no discretion.

Mr. Breaugh: By design or by accident, you are not hearing what I am saying. I am saying that in other jurisdictions the attempt is made to essentially say that there is a 12-month period or some period of time when you cannot do business, in a normal business sense, with the government.

Hon. Mr. Scott: Let me put this proposition to you: Let us take a simpler example. I own a piece of country property. I am entitled to apply, even now as a minister, for the agricultural tax rebate. The form asks me a series of questions. The assumption is that when I have answered those questions, if I have answered them correctly--"Yes, I own land; yes, I own land that is used for agricultural purposes; yes, I have paid my 1986 taxes"--then I get that benefit. If the scheme is one that everybody can enter and the winner coming out of the scheme is judged by the terms of the scheme and not with any discretion of the cabinet or a minister, then everybody should be able to do it.

I suppose, theoretically at the moment, when I make my annual application for my tax rebate, Mr. Nixon could say: "I know that land. It is scrub land and I am not going to give him his tax rebate." But he does not have that power under the statute. I could fight him. I would win. If I said I do not own agricultural land and he said, "We will give it to him anyway," he would still be in trouble. The auditor would get him that he was issuing tax rebates to people who are not entitled to them.

Mr. Philip: That is one we had better look into.

Hon. Mr. Scott: The point of the arrangement is that when there is a class of applicants, all of whom are similarly entitled, there is no reason to exclude any persons who are in that class. Persons who are ex-cabinet ministers do not lose their rights to the general benefit of the law. What they should lose for a 12-month period is their right to discretionary benefit that cabinet can provide.

Mr. Breaugh: I understand what you are saying, but I am just going to reiterate that the distinction is attempted in other jurisdictions to take in a somewhat different way than what you are proposing here. Again, I admit this may well turn out to be perception more than anything else, but it is going to be awfully difficult--

Hon. Mr. Scott: I do not know any jurisdiction that goes further than this with respect to classes of persons who are similarly entitled.

Mr. Chairman: There are others who have questions, Mrs. Sullivan and Mr. Morin.

Hon. Mr. Scott: I think that would deprive a minister of the general application of the law.

Mr. Breaugh: Yes. Of course you would also have to admit that there are not many Canadian jurisdictions that have this type of legislation at all.

Hon. Mr. Scott: I do not know any American jurisdictions.

Mr. Breaugh: I think there are some.

Mrs. Sullivan: I want to speak specifically on the amendment to subsection 6(3) that is proposed. It seems to me that this does allow an important freedom really and that is the freedom to support organizations, groups or individuals, perhaps former constituents or perhaps from other situations, who need advocacy support.

For instance, if as a member of the executive council one became involved in an environmental group in one's community subsequent to being a member of the executive council, this particular amendment would allow you to be able to continue to advance the interests of constituents or other members of that environmental group as you would ordinarily be able to do as a private citizen. I think that is the strength of this particular amendment.

Hon. Mr. Scott: I am not sure it goes quite that far in favour of the former cabinet minister. For example, if the Canadian Environmental Law Association applied to the cabinet for a discretionary grant of intervenor funding, for which there were no rules or regulations--they just wanted a lump sum--it seems to me that is not an application that is protected by subsection 3. If, on the other hand, we established an intervenor funding scheme, in which persons in a defined class were entitled to make applications for intervenor funding and there were rules, then in the latter case a representation could be made.

Mrs. Sullivan: Yes.

Mr. Chairman: Mr. Polsinelli?

Mr. Polsinelli: No, I am going to pass, Mr. Chairman.

Mr. Morin: Just so that I can understand it clearly then. Let us say there is a tender and the general public is involved. Let us say, for instance, that the government wants to purchase a certain piece of land and the Ministry of Government Services is involved, I as a former minister could offer that piece of property that belongs to me for the government to purchase without any problem whatsoever. Am I correct?

Hon. Mr. Scott: I am mixed up with the tender--

Mr. Morin: OK. The government wants to purchase a piece of land.

Hon. Mr. Scott: Yes.

Mr. Morin: Government Services does all the transactions. I happen to own that piece of land as a former minister. Does it prevent me, like any others, from selling it to the government?

Hon. Mr. Scott: If the executive council wants to buy a piece of land that is owned by a former minister, I think under clause 6(1)(a), it will not be able to do so within the first 12 months of his leaving office. I think that is one of the things Mr. Breaugh wants to assure. It will not be able to purchase a piece of land not owned by the cabinet minister if the cabinet

minister has made a representation in support of the purchase. You could not purchase my brother's land if I spoke up in his favour.

Mr. Chairman: What happens if it wants to put a highway through it or something of that nature and it is necessary? Do they have to divert--

Hon. Mr. Scott: That is not purchasing it. It may expropriate it. There is no reason why the government cannot expropriate anything.

Mr. Breaugh: The penalty is about a \$1 million or so difference between purchasing and expropriating.

Hon. Mr. Scott: On the high side.

Mr. Chairman: Not necessarily.

1520

Mr. Morin: My concern is that you are denying the right of a person to make a living, for instance, the right of making any money whatsoever.

Hon. Mr. Scott: We are trying to say that 12 months following leaving the cabinet, you should not be able to enter into a contract with the government nor should the government enter into a contract with you except contracts of a type that are defined by a class for which others are eligible.

Mr. Morin: Let me expand on that.

Hon. Mr. Scott: I understand your question.

Mr. Morin: Let us say there are five lots. One of these lots happens to be owned by a former minister of the cabinet, and the four other lots are owned by others, that have nothing to do with politics, nothing to do with the former employment with the government. Do you mean to say that this person would be denied the right to sell that property to the government?

Hon. Mr. Scott: It is not a question of denying the right--

Mr. Morin: For at least a period of 12 months?

Hon. Mr. Scott: No, no, it is not a question of denying a right. What the government undertakes when it complies with this statute is that it will not buy from a former minister. The former minister has lost no right, because he has no right to compel the government to buy his land. What is being given up here by the government is its right to contract with the former minister.

You may say that is a very foolish thing to give up because you may want to get a piece of land in the 12-month period that you are not going to be able to get, short of expropriation. I understand that, but the former minister has given up nothing. He has lost a right to sell to the government, but that is meaningless. He never had a right to sell to government if government did not want to buy it, and what we have said here is that the government will not buy it if a former minister is the owner.

Have you ever heard of the James Snow Parkway?

Interjection: We have heard of it.

Hon. Mr. Scott: Well, we are not going to have that. The Ian Scott-Gilles Morin Parkway is not going to be built.

Mr. Chairman: Unless you have been out of office for one year.

Hon. Mr. Scott: Right. It will be built slowly.

Mr. Chairman: Despite all this discussion, if Ian Scott left government tomorrow and he wanted something from the government, then his partner could call the new Attorney General or the deputy minister and say: "By the way, my name is John Jones. I was speaking to Ian and Ian said I should call you and--

Mr. Philip: (Inaudible) representation.

Mr. Chairman: No, no representation. "Ian Scott said I should call you because, obviously, as you know, he cannot call you; it is within a year of his leaving office, but I would like to get this for the law firm or the company or whatever." How do you deal with that?

Hon. Mr. Scott: We in politics know that happens all the time, even now; people phone the Minister of Health and they want nursing beds or something and in an effort to persuade the ministry to buy they say, "So and so has said this is a very attractive property." That happens all the time, and you cannot prevent people on the other end of the telephone from saying whatever they want to say, even if it is false.

What this says is that the government undertakes that it will not purchase from a former minister, except under a scheme for which other people are eligible, like a binding low tender arrangement; it will not purchase from an ex-minister or purchase anything that an ex-minister represents it should purchase for 12 months.

Mr. Morin: OK, just to pursue that again: I am a former minister and a partner of a syndicate that owns a piece of property. Does that mean the whole of the rest of the group will be penalized because I was involved in politics and the government will not be allowed to buy it? Is that what it means?

Hon. Mr. Scott: If you own the land, the government will not be able to let a contract--

Mr. Morin: I am a partner. A partner may be just five per cent.

Hon. Mr. Scott: All right. If you are a partner, that is it.

Mr. Morin: You cannot--

Hon. Mr. Scott: For 12 months.

Mr. J. M. Johnson: If subsection 3 comes into play, as you mentioned, would a former minister be able to buy land from the crown?

Hon. Mr. Scott: Let me try to answer your question. A former minister, under the amendment to subsection 3, or even if there was no amendment to subsection 3, would be able to buy land if it was sold at public auction because then he would be one of a class, each of whom, according to rules, has the rights to compete equally. He would be able to bid with the

others, and it is the high bidder who wins the land.

A former minister, even without adding clause (c), could buy land that the government offered by sale at auction. But if it was a private deal, that is, if he simply came to the government and said, "I would like to buy your land," the government could not sell it to him for 12 months.

Mr. J. M. Johnson: Let us revert back to public auctions. The former minister knows something that the public does not know, for example, about a parcel of land on the Spadina Expressway maybe the government is considering opening. The former minister has that knowledge but the public does not and he would be willing to pay a higher price than someone who was not knowledgeable about it.

Hon. Mr. Scott: If he is not a member of the House, I think you are technically correct. If he is a member of the House, he would be caught by sections 3 or 4 as a former minister who is a member of the House.

Mr. J. M. Johnson: But the 12 months would not apply in that case.

Hon. Mr. Scott: No.

Mr. Chairman: We have subsection 6(3)--

Mr. Philip: Am I not on your list, Mr. Chairman? You have nodded to me three or four times.

Mr. Chairman: I called on you earlier. Go ahead, Mr. Philip.

Mr. Philip: Even with the amendment, Ian Scott could own a building in downtown Toronto and still rent that office space to the government, provided the government went to tender, saying, "We need X-square feet of office space in a certain geographical area."

Hon. Mr. Scott: If there was a scheme where the low tender was required to be accepted, yes. In other words, if there was a scheme where the government does not decide who it is going to rent it from, then a minister can enter into those sweepstakes along with everybody else. Why? Because the government is not deciding anything. The scheme automatically works its results, just like an auction does.

Mr. Philip: Except that depending on the geographical area and how you word the contract, you can control pretty well how many--

Hon. Mr. Scott: Yes, but we are batting at flies now. If the government established a scheme that defined the geographical area in which the tender was to be offered as the space on which this one building was located, the commission would have no trouble saying, "Look, nobody was similarly entitled. What are you talking about?" If he picks one office block and the only other building in the office block is Eaton's, he is not going to have much more trouble. In other words, the commissioner is going to judge whether this cabinet has breached that arrangement, looking at the scheme it set up.

No one would pretend, to go back to the auction analogy, that anybody has an advantage in an auction. Why? Because the prize at the end is achieved by rules over which the person putting up the goods to be auctioned has no control. The high bidder gets. If the low tender gets, it is exactly the same

thing. It is the auction in reverse. Indeed, a tender scheme is a kind of silent auction in which the offers are not made competitively; they are made in sealed envelopes privately. If a complaint was made to the commissioner that the cabinet had granted a contract to a former member and there were no persons similarly entitled, that would be the end of that scam in one minute.

Mr. Philip: The kind of thing I am talking about is the kind of scam that went on that was investigated by the Provincial Auditor a few years ago with regard to the offering of securities (inaudible) for Ontario. Do you recall that?

Hon. Mr. Scott: No. It was the previous government.

Mr. Breaugh: There is no need to be surly about it.

1530

Mr. Chairman: OK, can we get back on the rails here and deal with subsection 6(3)? The government has an amendment and the person making the amendment is now back in the room. Dealing with subsection 6(3), Mr. Polsinelli moved that "to the former member" be deleted from that section.

Hon. Mr. Scott: No, he basically moved that subsection 3 should now read "Clauses (1)(a), (b) and (c) do not apply," etc.

Mr. Polsinelli: I read the motion into the record.

Mr. Chairman: OK, it is there.

Mr. McClelland: You were right in part. It did it in addition to (c).

All those in favour of the amendment?

All those opposed?

Motion agreed to.

La motion est adoptée.

Mr. Chairman: All those in favour of section 6, as amended? That includes subsections 1, 2 and 3.

Mrs. Sullivan: Mr. Chairman, do we not have another? Have the Progressive Conservatives withdrawn this?

Mr. Chairman: Yes.

Mr. Eves: Yes, that went down the tubes with the former civil servants.

Section 6, as amended, agreed to.

L'article 6, modifié, est adopté.

Mr. Chairman: Section 7 or do you want to go back to section 5?

Hon. Mr. Scott: Mr. Breaugh, you wanted some more time to think about section 5, did you not?

Mr. Breaugh: Normally, when you stand it down, you would come back to it at the end of all subsequent sections.

Section/article 7:

Mr. Eves: I would like to move an amendment to subsection 7(1). Basically, it is a similar amendment to the amendment we moved on section 6. I do not see any need to prolong the debate about parliamentary assistants. We have already had it. I will move the amendment and we can get on with the rest of our lives.

Mr. Chairman: Mr. Eves moves that section 7 of the bill be struck out and the following substituted therefore:

"(1) A member of the executive council or parliamentary assistant shall not,

"(a) engage in employment or in the practice of a profession;

"(b) carry on a business, including the management of personal financial interests; or

"(c) hold an office or directorship other than in a social club, religious organization or political party,

"except as required or permitted by the responsibilities of his or her office."

M. Eves propose que l'article 7 du projet de loi soit remplacé par ce qui suit:

«(1) A l'exclusion de ce qui est requis ou permis dans le cadre de ses fonctions, le membre du Conseil des ministres ou l'adjoint parlementaire ne doit pas:

«a) exercer de profession ni d'emploi;

«b) exercer d'activités commerciales, notamment la gestion d'intérêts financiers personnels;

«c) occuper de poste ni ne faire partie d'un conseil d'administration, sauf dans un club social, une organisation religieuse ou un parti politique.»

Does anyone want to speak to that?

All those in favour of Mr. Eves's amendment?

All those opposed?

Motion negatived.

La motion est rejetée.

Mr. Chairman: Is there another amendment?

Mr. Polsinelli: I have a number of amendments to section 7.

Mr. Chairman: Subsection 7(1)?

Mr. Polsinelli: I have an amendment to clause 7(1)(b), subsection 7(4) and subsection 7(5). Would you like me to read all those into the record?

Mr. Eves: I am quite prepared to deal with subsection 7(1), but we also have amendments to subsection 7(2), subsection 7(3), subsection 7(4) and a new proposed section. I will be guided by legislative counsel as to where our amendment with respect to section 7a should go.

Mr. Chairman: Why do you not move subsection 7(2) then, Mr. Eves? We will deal with your amendments first and then we will deal with the government amendments.

Mr. Eves: Subsections 7(2), (3) and (4) really are all basically the same--no, pardon me, they are not necessarily the same.

I move that section 7 of the bill be further amended by adding the following thereto:

"(2) A person who becomes a member of the executive council or a parliamentary assistant shall comply with the subsection (1) and section 7a before the 31st day that follows his or her appointment."

It occurs to me that, seeing as we are referring to our proposed section 7a, perhaps we should deal with that first before we deal with subsection 7(2).

Mr. Chairman: Do you want to put section 7a now?

Mr. Eves: I would prefer to do it that way.

Mr. Chairman: Why do you not get it on the table, and then we have it before us?

Mr. Eves: OK.

Mr. Chairman: Mr. Eves moves that the bill be amended by adding thereto the following section:

"7a. A member of the executive council, a parliamentary assistant or such a person's spouse or minor child who has a financial interest in a widely held corporation or any financial interest in another enterprise shall dispose of his or her interest if the corporation or other enterprise enters into a contract with or receives a benefit from the government of Ontario or a crown agency."

M. Eves propose que le projet de loi soit modifié par adjonction de l'article suivant:

«7a. Le membre du Conseil des ministres, l'adjoint parlementaire, ou le conjoint ou l'enfant mineur d'une telle personne, qui détient un intérêt financier dans une compagnie ouverte à un grand nombre d'actionnaires ou tout intérêt financier dans une autre entreprise se dessaisit de son intérêt si la compagnie ou l'autre entreprise conclut un contrat avec le gouvernement de l'Ontario ou un organisme de la couronne ou reçoit un avantage de ces derniers.»

Mr. Eves: The purpose of the proposed section is with respect to divestment by cabinet ministers, parliamentary assistants, their spouses and minor children. We had this discussion last week when we discussed the basic

principles and tenets of the bill. I do not see much need for going into the reasons for same, other than to reiterate that in the province of Alberta and previously in the province of Ontario, although it was not quite readily admitted and enshrined in statute, by guideline such divestment was required.

I compliment the government on the disclosure aspects of this legislation, but I really feel that it would be somewhat of a step backward if this Legislature were to come up with conflict-of-interest legislation that in one respect improved it by requiring disclosure but, on the other hand, took away something from the previous guidelines with respect to divestment for widely held or public corporations or interests in some sort of private financial enterprise that does business directly with the province of Ontario.

I would also point out to members the summary handed out to us by the clerk and research, exhibit 2 that we were handed out. If you would care to thumb through what other jurisdictions in Canada do, you will see that there are somewhat similar restrictions, although not identical, in Alberta, Quebec and New Brunswick and, as I said, they were adhered to here with respect to guidelines previously.

Hon. Mr. Scott: Can I suggest that in one respect this amendment is unnecessary and in another respect I submit it is bad policy. As far as a member is concerned, the kinds of provisions that Mr. Eves has referred to in other provinces already exist here under section 10 of the Legislative Assembly Act. If there is any member who directly or indirectly has a contract with the government, he is at the risk of having to become disqualified. That disqualifies him from sitting in the assembly under section 10, so for members we have, and always have had, precisely the same legislation that those other provinces have. Section 7a is a duplication, as far as members are concerned, of what exists in section 10, except that under section 10 the penalty is greater. It is an automatic disqualification.

Now, when it comes to spouses, you may want to put in this legislation something like section 7a, but frankly, I and the government are opposed to it for spouses because we believe that spouses should be able to contract with the government as long as there is public disclosure. The cabinet minister's wife who has a contract with the Ministry of Education should not have her husband disqualified because she does and should not lose the contract. She will be obliged to disclose it, either if it is an asset or if it provides income, under the disclosure statement.

What we have tried to do here is recognize that members should be disqualified, and that is section 10 of the Legislative Assembly Act. But our policy is not to disqualify spouses or members on account of contracts their spouses have. A man or a woman who is a spouse carrying on business should be entitled to compete for government contracts just like anybody else, as long as there is disclosure if they get one. Now, if they get one, that disclosure occurs because the commissioner is obliged to list their assets and their income from any source, as long as the member does not try to help them get the contract, because if he does, he will then have breached either section 3 or section 4 of the act.

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Mr. Chairman: Mr. Breaugh.

Mr. Breaugh: There are a number of ways in which we can do this. I am not quite as comfortable with this amendment as I would like to be.

As I said initially, we have drafted now and circulated an amendment to a subsequent section of the act which would essentially say the commissioner has the power to order someone to divest himself of his interests. I think I am going to stick with that proposal. I see it as being kind of mid-way between the two positions. I frankly have no axe to grind as long as it is. Just to put a personal perspective on it, I do not see how someone would get booted out of a cabinet or be considered to be an evil person because a spouse might work for the government.

I think that would be unfair. I do not think that, as an all-the-time rule, you could always set the circumstances which say they have to get rid of certain financial interests. So I am concerned that we find a mechanism which is fair. I agree with Mr. Eves.

The perception used to be that you could just simply not do business of any kind with the government. I do not know how close that came to reality but, on occasion, it was--I recall, for example, some of the instances where I saw previous members of previous cabinets resign for a while. I was not terribly keyed up that somebody had done something wrong. The fact that somebody in Darcy McKeough's family owned land in Pickering--I could see that there was a conflict there, but it was not a very direct one and improper conduct, I suppose, is the most serious charge that I would lay against him, but it did not seem to me that they made gobs of money out of that kind of stuff. So I am less concerned about that than I am in providing some mechanism whereby a third party makes the judgement call.

I do not believe, as the Attorney General does, that it is good enough to say, "Well, divestment is always an option that is available to the member of the cabinet." I do not think that--this is not about their judgement calls, about whether they get rid of stocks or assets or whatever. This is about whether you have a mechanism in place whereby somebody says, "Well, we're aware that you have disclosed your assets and we think that you really should not have those, and so you must divest."

It strikes me that is really the only reasonable ground to take here. If you make it a hard and fast rule that you just have to get rid of all of these things, there may be an occasion--I do not really move in this world so I cannot speak to it that well--but there may be an occasion when someone could hold on to some stocks or some assets in some way so there is no real conflict, but I do not think that is the judgement call of the individual member. I think he or she should have to take that to the commissioner and the commissioner makes the call.

I understand what is going on here and my problem is, of course, if I say that there was a consensus on the part of the government to accept some kind of mid-point here or some compromise position, I would be disposed to say "No" to this amendment because we are going to deal with it subsequently. I have not heard the government say that yet.

Hon. Mr. Scott: I think we have adopted the mid-point because, while we have not adopted the commissioner's right to compel a member or minister to sell anything, we have recognized clearly the commissioner's right to say, in effect, "You cannot hold this job if you are going to continue to own that asset."

In the example I have given, if there was a Minister of Mines who owned mining shares, that would be the effect. The commissioner would not have the right to require him to sell mining shares, but the commissioner would have

the right to say, "Any decisions you take in the mining portfolio are going to be decisions vitiated by conflict of interest." The result is the same.

Mr. Breaugh: There are basically two minds at work here and we are missing one another in the hallway.

Hon. Mr. Scott: No, I think we end up at exactly the same place in the result 99 times out of 100. The difference is, on the one hand, my perception that the commissioner should be encouraged to intervene and say when a conflict exists and punish for it by declaring a seat vacant, and on the other hand, your concern that the commissioner should be empowered to require citizens to sell stuff just because he says so.

Mr. Breaugh: Yes.

Hon. Mr. Scott: I think he should be empowered to require people to give up their seats if they act. You say no, he should go further, he should be able to make them give up their seats and make them sell stuff. I do not think both those powers are necessary.

Mr. Chairman: Does anyone else want to speak to section 7a?

Hon. Mr. Scott: You have certainly shown how difficult it would be to support section 7a. I think you made that point very graphically. A man of principle like you could hardly, in the light of what you have said, support 7a, if venom was not motivating you.

Mr. Breaugh: I was not going to support this proposed amendment until you shot that little barb.

Mr. Eves: One of the comments made by the Attorney General was with respect to section 10 of the Legislative Assembly Act. I would like to know from the Attorney General and his staff whether section 10 of the Legislative Assembly Act would cover the situation, for example, where a cabinet minister owned 25 per cent of the shares in a private company, his wife owned 25 per cent of the shares, his sister owned 25 per cent of the shares and his brother-in-law owned 25 per cent of the shares, and that private company entered into a contract with the province of Ontario. I know that is strictly hypothetical and would never happen.

Mr. Breaugh: Like a forest management agreement.

Hon. Mr. Scott: That is covered. Here is what section 10 says. Listen to the breadth of this language. It is much broader than the proposed section 7a: "...no person holding or enjoying, undertaking or executing, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, any contract or agreement with Her Majesty, or with any public office or ministry, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service, work, matter or thing, is eligible as a member of the assembly or shall sit or vote therein."

It is hard to imagine a section broader in its application than that. It is much broader than the proposed section 7a: partnerships, syndicates, what have you.

Mr. Chairman: Shall we vote on section 7a then?

Mr. Eves: If that is true, what is the member for Cochrane North (Mr. Fontaine) doing sitting in the Legislative Assembly?

Mr. Chairman: All those in favour of the amendment by Mr. Eves numbered 7a? All those opposed?

Motion negatived.

Mr. Chairman: Let us go with the other amendment, Mr. Eves, that you have before us to subsections 7(2) and (3).

Mr. Eves: With respect to subsection 7(3), there will not be an amendment now because I do not see any sense. The majority of the committee has already voted against parliamentary assistants, so I am not going to move that amendment any further and prolong this. But with respect to subsection 7(2), I do have an amendment.

Mr. Chairman: Do we have that?

Mr. Eves: Yes, you do, but I am going to change the wording slightly.

Mr. Chairman: Mr. Eves moves that section 7 of the bill be further amended by adding the following thereto:

"(2) A person who becomes a member of the executive council shall comply with subsection (1) before the 31st day that follows his or her appointment."

M. Eves propose que l'article 7 du projet de loi soit modifié par adjonction du paragraphe suivant:

«(2) La personne qui devient membre du Conseil des ministres se conforme au paragraphe (1) et l'article 7a avant le 31^e jour qui suit sa nomination.»

Mr. Eves: Basically, I have taken out the words "or a parliamentary assistant" and the words "and section 7a," because they have both been defeated, and what I am proposing to do, as we discussed last week, is change the time for compliance from 60 days to 30 days.

1550

Hon. Mr. Scott: The obligation under the bill that has to be met within 60 days is the disclosure requirement to the commissioner contained in section 11. The disclosure statement that the member has to file within 60 days is, of course, his assets, liabilities, financial interests of himself, his spouse and his children, a statement of income, a statement of income that numbered corporations or wholly owned subsidiaries may have and so on.

There are two problems about this which require some time. One is collecting all that stuff together, particularly where you have a wholly owned corporation, in a form that will permit you to fill out the disclosure statement. Second, the member should have a reasonable period of time in order to decide if he wished to divest and to do the divesting. Someone coming into the cabinet—for example, when I came into the cabinet I had a partnership in a law firm. If this bill had been in place, I would have had to dispose of that partnership. I did; I got rid of it. I negotiated myself out of it, but that cannot always be done right off the bat.

We picked 60 days. If we had picked 45 or 70, I do not know that it would have been critical, but frankly I think 30 days is a little short. You

are sworn into the cabinet usually the day after it is announced that you are going in. I do not know how much warning Mr. Eves got, but most of us do not get much warning. You then have the celebratory party, so you are not able to get down to business for about a week, answering congratulatory telegrams from Parry Sound and all the rest of it.

No doubt, Mr. Eves, you were trying out the Ministry of Natural Resources' plane in the early days, and it was a little time before you could get to your accountant and say, "Can you pull all this together for me because I have to answer this questionnaire in detail?" He would say, "Yes, how much of this do you want to sell?" Frankly, I think it is a little tough. If we are going to set rules, it seems to me that they should be reasonably workable, and I think 30 days is a little tough.

Mr. Eves: The reason basically for moving that amendment was that previously under the guidelines, the time for cabinet ministers was 30 days, or 31 days if you prefer. I think that members of the executive council are somewhat different than ordinary members in that they are not normally appointed to cabinet on becoming elected. It is usually some period of time after that, usually a few weeks, and you usually are given some notice that you are going to be in cabinet. We are just trying to be consistent with what the guidelines used to be, which was 30 days with respect to cabinet ministers.

Hon. Mr. Scott: In 1985, when we came in, of course, there was no expectation that we would form the government. Indeed, Mr. Grossman and the others were saying that they in fact had the New Democratic Party in the bag right down to the last minute. We did not know that; so when it turned out that the NDP had done the right thing, we had the shortest possible notice before we came into government.

The other point I would make is that the Davis guidelines, which had 30 days, did not require the kind of detailed, elaborate disclosure to the public which is found here. What this is really is the single occasion before his interview with the commissioner when the member has to get it all together; he is not going to be able to say after that, "Look, I forgot about it." He will be answering a fairly complicated questionnaire, and it seems to me he should be allowed time to collect it.

Mr. Chairman: Members, you recall that you decided yesterday you wanted to leave at four o'clock. Does that still stand?

Mr. Breaugh: We will try to deal with this section.

Mr. Chairman: Shall we vote on this section?

Mr. Breaugh: Could we debate it first?

Interjection: No.

Mr. Chairman: There is an example--

Mr. Breaugh: In that case, let us adjourn.

Mr. Chairman: Just because Mr. Breaugh has not spoken to it, it means we have not debated on it. OK. Mr. Breaugh.

Mr. Breaugh: I am having a little difficulty deciding whether there is any real practical problem with this or not, in part because I do not have

an accountant. You know, all this wonderful information is in three or four drawers somewhere in my house. If I can find it tonight, we will get it together for you tomorrow morning. This is not a practical problem for me.

The difficulty I have is that I am assuming that most of the time, once this process is in place and when the law has been in use for three or four years, we will understand the process a bit more. We will become familiar with the forms. We will have gotten most of the information together and to say that you have to comply in 30 days three or four years from now might be OK.

The problem I have is that every once in a while we will have this little interruption called an election, and then there will be an influx of new members and the process will take over again. In those instances, it seems to me, to have to do it within a 30-day period is going to be tough. If you been a member and made your disclosure statements, basically what you have then is 30 days to make your choices. I see that as being fairly workable, but every time you have a general election or even if it were a by-election and a new member comes into the assembly and is subsequently appointed to the cabinet, it seems to me that this proposal would cause some difficulty.

In fact, I think the problem I have with it is that the second part of the proposal would be exercised a great deal, and that is, that the commissioner would say, "Well, it is 30 days, but in your circumstance, we cannot cope and we will give you another 90 days." I think it will be a self-defeating exercise.

I am listening for the argument that tells me we really could handle this, but I have not heard it yet. I think you are in danger of making a proposal here that you really could not implement. Most of the time, I tend to think you could, but after every general election, I am sure, the old commissioner would be very busy saying: "We cannot get the figures put together. He has not got all the reports from his accountants, so we are going to have to extend the period." I am a little reluctant to do that. Am I wrong?

Mrs. Sullivan: I just want to speak against the Progressive Conservative motion. For some people who are being invited into the executive council, it would be easy to comply with making these provisions by the 31st day, but for many it would be impossible to comply and by setting a rule that is impossible to comply with, I think we are just compounding the foolishness.

Whether it is the situation of a lawyer, as the Attorney General has spoken of, who may have to remove himself from a partnership or whether the decision-making period necessary even to decide whether you want to enter into a management trust--frequently, because of considerations of family income and so on, these are decisions not made simply for the period of time that one is a member or a member of the executive council but for the rest of one's life.

Similarly, the act as written allows and assumes that members of the executive council may not necessarily be members of the House. We do not have that situation right now, but it could well happen. The period of time given in the act, 61 days, seems to me to be an appropriate period.

Mr. Philip: Let us take a vote.

Mr. Chairman: OK. There is no one else who wishes to speak on this.

All those in favour of the amendment of subsection 7(2)?

All those opposed?

Motion negatived.

La motion est rejetée.

1600

Mr. Chairman: That deals with your amendments?

Mr. Eves: We have another amendment to subsection 7(4).

Mr. Chairman: Do you want to deal with that now or do you want to call it quits for today? It is four o'clock.

Mr. Eves: I think we could probably deal with it in fairly short order. Actually, I am going to read the proposed amendment. I am proposing to amend two clauses in subsection 7(4). That would be clause (c) and clause (d). I am not going to move the amendment with respect to the words "or parliamentary assistant."

Mr. Chairman: Mr. Eves moves that section 7 of the bill be further amended by adding the following thereto:

"(4) If a member of the executive council complies with subsection (1) by entrusting his or her business or the management of his or her personal financial interests to one or more trustees,

"(a) the provisions of the trust shall be approved by the commissioner;

"(b) the trustees shall be persons who are at arm's length with the member of the executive council and approved by the commissioner;

"(c) the trustees and the member of the executive council shall not consult with one another with respect to managing the trust property;

"(d) the trustees shall report all material changes in assets, liabilities and financial interests contained in the trust to the member of the executive council and the commissioner within one business day after the changes have occurred."

M. Eves propose que le projet de loi soit modifié par adjonction du paragraphe suivant:

«(4) Si une personne se conforme à l'alinéa (1)b) en confiant ses activités commerciales ou la gestion de ses intérêts financiers personnels à un ou plusieurs fiduciaires:

«a) les dispositions de la fiducie sont approuvées par le commissaire;

«b) les fiduciaires n'ont pas de lien de dépendance avec la personne et sont approuvés par le commissaire;

«c) les fiduciaires et la personne ne doivent pas s'entretenir de la gestion des biens en fiducie;

«d) les fiduciaires font rapport à la personne et au commissaire de tous les changements importants apportés à l'actif, au passif et aux intérêts

financiers qui sont déposés en fiducie, au plus tard un jour ouvrable après que ces changements ont été faits.»

Mr. Eves: If I may speak briefly to those, first of all, I would like to be guided, quite frankly, by the Attorney General and his staff with respect to the proposal we are making with clause (c). As I read it, the obligation is placed solely on the trustees not to consult. We are trying to include an obligation here on the member of the executive council. If we can be satisfied that is implicit or goes without saying, then perhaps that amendment is not necessary.

With respect to the amendment we are proposing to clause (d), you will note that instead of just being fairly loose and saying "in writing, forthwith" we have taken out these words, because we realize that may not be practical and have added the words "within one business day." I can actually see where this may serve to protect some cabinet ministers in certain instances.

Hon. Mr. Scott: I have two comments. First of all, I think one business day is completely impractical. Second, the reason I like it in writing is if the minister has been informed by the trustee that the trustee has bought International Nickel shares, I do not want the minister to be able to say, "I did not know that."

He may say he told me, but I do not remember the conversation. I do not want to get a credibility thing going about whether the trustee told me or not. That is why we say in our bill that the trustee shall confirm it in writing. There is going to be no doubt the minister is squarely on the hook if it is in writing. Orally, you run the risk that there will be a denial.

The other thing about orally is if the trustee and the member of the executive council are going to have to consult orally for the purposes of reporting, sooner or later someone is going to say, "That oral consultation was for the purpose of giving instructions, which was previously prohibited." In my own case, and I think all members are the same in the executive council, I do not want to ever hear from my trustee. I do not want to ever talk to him face to face at all. I will get his letters, if and when he acquires a new asset on my account, but if I am caught talking with him, I do not want someone saying, "You must have been consulting or giving instructions" or anything. That is why I think the one day is impractical and orally is dangerous to the operation of the scheme.

With respect to the amendment to clause (c), I have no strong feelings about it. We considered that kind of arrangement, but what we wanted to do with (c) was clearly impose an obligation. The obligation on the member is clear, but we wanted to impose an obligation on somebody else.

If you remember the evidence in the Sinclair Stevens case when the trustees came forward to give evidence, they said: "There were no rules that governed our conduct. We were trustees, but." This is such a rule: The trustee shall not, and he will be in breach of a statute if he does that. That is really going to be the protection under the statute, because if you have a bad minister, he will try to get around it, so we want to put it squarely on the trustee. If the minister consults with the trustee, of course he is carrying on a business.

Mr. Eves: I accept all the points that the Attorney General has made, and they are well made. I guess my real problem, or our real problem

with the wording of clause 7(4)(d) was the word "forthwith," whatever that means.

With respect to--

Mr. Chairman: Maybe he can elaborate on that.

Mr. Eves: OK.

Hon. Mr. Scott: "Forthwith" is a word that generally is designed to mean "as quickly as possible" and it reflects the fact that it will be the trustee's obligation to report as quickly as possible.

In some cases, with respect to the acquisition or disposition of an asset, "as quickly as possible" may be within a day; but if you have a closing of a transaction, it may take a week. As soon as the asset is acquired or disposed of, as soon as possible, the trustee will report forthwith.

Mr. Eves: I guess all we were trying to do is come up with a definite time line.

Mr. Chairman: Mr. Eves, as I understood it, you accepted the Attorney General's explanation. Do you want to withdraw the amendment, seeing that you have got the explanation, or do you want us to vote on that?

Mr. Eves: Well, I am not happy with the wording "forthwith," quite frankly. I would like to see a definite time line requiring the trustee to do this within a certain period of time instead of leaving it somewhat vaguer by definition.

Hon. Mr. Scott: You see, I think the message we are trying to send to the trustee--who, after all, is not going to have an interest in this; it is a trust company or something--is "as soon as possible." It is just like when we come to the commissioner making his disclosure to the assembly, we say "as soon as practicable."

I mean, it would be nice to say "within one week," but after an election he is going to be confronted with 135 disclosure statements. He is not going to be able to do it within one week. After a by-election he probably will be able to do it within one week, so you do not want after a by-election to allow him 60 days. You want to say, "as soon as practicable."

Mr. Morin: Why do we not say that: "without any delay"?

Hon. Mr. Scott: Yes. All right, "without delay." "Forthwith," I think, means the same as "without delay," but--

Mr. Chairman: OK. We have the amendment. Do you want to withdraw that, Mr. Eves, or do you want to vote on it?

Mr. Eves: I would be happier with the word "immediately."

Mr. Chairman: Let us vote. All those in favour of the amendment? All those opposed?

Motion negatived.

La motion est rejetée.

Mr. Chairman: Mr. Polsinelli, you have some amendments you wanted to put?

Mr. Polsinelli: I have some government amendments. The first one is an amendment to clause 7(1)(b).

Mr. Chairman: Mr. Polsinelli moves that clause 7(1)(b) of the bill be amended by striking out "including the management of personal financial interests."

Mr. Polsinelli moves that subsection 7(4) of the bill be amended by striking out "or the management of his or her personal financial interests" in the second and third lines.

Mr. Polsinelli moves that section 7 of the bill be amended by adding thereto the following subsection:

"(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business."

M. Polsinelli propose que l'alinéa 7(1)b) du projet de loi soit modifié par suppression des mots «notamment la gestion d'intérêts financiers personnels».

M. Polsinelli propose que le paragraphe 7(4) du projet de loi soit modifié par suppression des mots «la gestion de ses intérêts financiers personnels» aux première et deuxième lignes.

M. Polsinelli propose que l'article 7 du projet de loi soit modifié par adjonction du paragraphe suivant:

«(5) Pour l'application du présent article, la gestion d'intérêts financiers personnels d'ordre courant ne constitue pas des activités commerciales.»

Do you want to speak to any one of those things, Mr. Polsinelli?

Mr. Polsinelli: No, I am happy with all of them, Mr. Chairman.

Mr. Chairman: OK.

Hon. Mr. Scott: Perhaps I can. You will recall that Mr. Aird said that, taken literally, section 7 prevented you from going to the bank, writing cheques or carrying on your own personal financial interests. These three amendments, which are a package, preserve the concept that you cannot carry on a business, but do recognize that you can personally manage your own life by that kind of minor financial transaction.

Mr. Chairman: So in actual fact they have been recommended by the commissioner, in principle.

Hon. Mr. Scott: Yes.

Mr. Chairman: We will deal with clause 7(1)(b).

Mr. Breagh: I do not have any real problem with these amendments. I think I understand what you are trying to do. I just want to put the cautionary note here that "personal financial interests" means a whole lot of

different things to a whole lot of different folks, and I want it to be clear that what we mean when we change these words is that the normal looking after of your bank accounts, putting your paycheque in and meeting the mortgage payment is what we are considering here. We are not considering your personal financial empire, and folks should know the difference between the two.

If you read it in the context of the commissioner's letter to the committee, I think you see what the government amendment is trying to do. If you do not read it in that context, it certainly could take on a whole different connotation. I am a little unhappy that it gives it that latitude, but I am at a loss to find you better words.

1610

Hon. Mr. Scott: I think the important point of distinction is that if you are carrying on, if you are dealing with your personal financial interests in the attempt to extract an income from them by managing them, then you are carrying on business and you cannot do that. For example, if I owned a number of apartment buildings and was collecting rent, I could not say that was the management of a personal financial interest. I would be managing personal interests all right, but it would be with a view to obtaining an income. Even if I was no good at it, that would be its purpose. That would be carrying on a business.

Mr. Breaugh: That is right.

Hon. Mr. Scott: On the other hand, as Mr. Aird says, it could be said that the management of personal and financial interests means paying your Visa or your telephone monthly. Those activities are not directed to earning income. They are directed to ordering your daily life by the payment of your accounts and the acquisition of the things you need to get by.

Mr. Philip: Why do you not say that in subsection 5?

Hon. Mr. Scott: Because we were pressed to find language and I think we do say that in effect in subsection 5. It is what we attempted to do.

Mr. Faubert: If we have subsection 5, which is an explanatory clause as to what is a personal financial interest, why did we not leave them as standing?

Hon. Mr. Scott: Because what Mr. Aird said--I must say his conclusion is not necessarily one everybody would have drawn, but he was the one who had to work with this bill. He said that he thought the words under clause 7(1)(b), "including the management of personal financial interests," extended the normal meaning of carrying on a business.

As the draftsmen, we tried to persuade him, "No, it is really just an example of carrying on a business, designed to deal with a business empire which was securities or some kind of financial instruments." He said, "The way you have set it up, it looks as if you have extended carrying on business to include something that would not normally be carrying on a business, the management of personal financial affairs." He said that if he had our intention right, he thought these amendments should be made.

Mr. Faubert: Including the new subsection 5 to give a specific explanation as to what is in there.

Hon. Mr. Scott: Yes.

Mr. Faubert: OK; thank you.

Mr. Chairman: All those in favour of Mr. Polsinelli's government amendment, clause 7(1)(b)?

All those opposed?

Motion agreed to.

La motion est adoptée.

Mr. Chairman: All those in favour of the government amendment put by Mr. Polsinelli, subsection 7(4)?

All those opposed?

Motion agreed to.

La motion est adoptée

Mr. Chairman: All those in favour of the government amendment put by Mr. Polsinelli, subsection 7(5)?

All those opposed?

Motion agreed to.

La motion est adoptée

Mr. Chairman: All those in favour section 7?

Mr. Breaugh: Before you put that, I think it is only fair, because I think there is going to be some controversy around it--if you are an advocate of the trust system in some way, it seems to me that the government has attempted to put forward a reasonable, accurate way of doing that. There are those in my caucus who would probably be very angry if I did not at least note in passing that they are not real happy with this concept at all and that no matter how you set it up or how you do it, there is going to be difficulty with this.

I suggest that in future when there is controversy swirling about this bill, it will probably come on this section and about these relationships which you have attempted to describe here, because much of what you have there is going to cause a whole lot of headaches for an honest person and a whole lot of opportunities for a dishonest person.

Hon. Mr. Scott: I think your notion is clear that the options that confront someone in that situation, as far as we can imagine them now, are to have someone else manage the business or to require that it be sold. I understand how members of your caucus may feel that members entering cabinet should sell their assets.

Mr. Chairman: All those in favour of section 7, as amended? All those opposed?

Section 7, as amended, agreed to.

L'article 7, modifié, est adopté.

Mr. Chairman: We will deal with section 5 or 8, probably section 8, tomorrow morning at 10 o'clock sharp, go to 11 o'clock and then deal with the transponder matter.

Hon. Mr. Scott: Are we sitting at 10 o'clock tomorrow?

Mr. Chairman: Yes.

Hon. Mr. Scott: I have to go to cabinet tomorrow. Isn't tomorrow Wednesday?

Mr. Cordiano: Why don't we sit at 11 o'clock? We are going to have a problem if you cannot be here.

Mr. Breaugh: I would put it this way. I do not want to put undue pressure on the minister but, frankly, there is no sense in trying to proceed with this bill unless he is here.

Mr. Chairman: Do you want to start in the afternoon?

Mr. Philip: That poses a problem for Mr. Breaugh.

Mr. Breaugh: It is hard to jerk the committee's hours around because we are all scheduling other events around the normal hours of sitting.

Mr. Chairman: Yes, I know.

Mr. Philip: We are really going to be pushing the speedometer to get back here for two.

Mr. Chairman: Do you want to go a little later tomorrow?

Hon. Mr. Scott: Well, we are doing better than the other committee, aren't we?

Mr. Cordiano: Is the Attorney General flexible? Can he come at 11 and we can have the other people come at 10?

Mr. Chairman: No, he has to go somewhere at 11.

Mr. Breaugh: It seems to me fairly obvious that we are going to start at 11 and deal with the transponder issue.

Mr. Chairman: Then we will deal with Bill 1 at two o'clock sharp and we will go as late as committee wants to sit tomorrow.

Mr. Breaugh: We will go to 4:30 tomorrow.

The committee adjourned at 4:17 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
LEGISLATIVE ASSEMBLY BROADCAST CHANNEL
WEDNESDAY, JANUARY 20, 1988
Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Epp, Herbert A. (Waterloo North L)
VICE-CHAIRMAN: Morin, Gilles E. (Carleton East L)
Breaugh, Michael J. (Oshawa NDP)
Cordiano, Joseph (Lawrence L)
Faubert, Frank (Scarborough-Ellesmere L)
Johnson, Jack (Wellington PC)
McClelland, Carman (Brampton North L)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)
Sullivan, Barbara (Halton Centre L)
Swart, Mel (Welland-Thorold NDP)

Substitutions:

LeBourdais, Linda (Etobicoke West L) for Mr. Morin
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Swart

Clerk: Forsyth, Smirle

Witnesses:

From the Ministry of Intergovernmental Affairs:
Kent, Larry, Director, Communications Branch

From TVOntario:
Allman, Catherine, Manager, Telecommunications Relations

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, January 20, 1988

The committee met at 11:13 a.m. in room 230.

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL

Mr. Chairman: I call this committee meeting to order. The first item on our agenda is a memo from Larry Kent, director of the communications branch of the Ministry of Intergovernmental Affairs, dealing with a request to use our broadcast channel on Sunday, February 14, 1988, and it is regarding the transponder.

Welcome, Mr. Kent, to the meeting of the Legislative Assembly committee. If you want to make a presentation, members, as you know, have a copy of some of the correspondence, the proposal and so forth.

The clerk has also distributed for your information the criteria of TVOntario with regard to these matters, the criteria that the committee has established with regard to the transponder. You have that in front of you, and if you happen not to have it, the clerk will be glad to give you a copy.

Mr. Kent, if you want to make your pitch, you are welcome to do that.

Mr. J. M. Johnson: I wonder if it is necessary for Mr. Kent to have to go through the whole section. I think nearly all the members have likely read the report and we could condense it to a few specifics and then ask questions.

Mr. Breaugh: I was just going to suggest a little process thing here. We have the staff report and we have had a chance to read it. In preparation of the report the next time around, everybody we have asked to comment on it has made his recommendation. Maybe the clerk could assist us in this.

If these things are to be done in the future, we could get a recommendation that has the proper conditions in there. For example, on looking through the reports we have today, the report from Catherine Allman recommends approval subject to a couple of conditions: getting a temporary network licence from the Canadian Radio-television and Telecommunications Commission, suitable insurance coverage and that it be distributed on the transponder after the transmission of the Wawatay Native Communications Society signal.

That is precisely the kind of recommendation I would like to make. If the staff report could pick out that stuff where there is consensus and put it in the form of a recommendation, then we could simply move a staff recommendation that would have the appropriate wording for conditions.

That is essentially what I would like to do. I would appreciate it if the staff would attend the meeting, but I do not think we need to have them read the whole report. Essentially, I have made up my mind and I would like to move the recommendation. If people have questions on it, we can discuss it and then proceed from there.

Mr. Chairman: Mr. Breaugh, the clerk has already made up some things, and I have given them to Mr. Johnson who is going to read the motion. The motion is all made up, if members agree. We can hear Mr. Kent--make it relatively short, Larry--and then Mr. Johnson or somebody can make the motion, which has the various conditions that, hopefully, you will find satisfactory.

Mr. J. M. Johnson: Would it be in order if I moved the motion? Then maybe Mr. Kent or some other members would like to comment on one or two aspects of the motion.

Mr. Chairman: I would be glad to entertain that, Mr. Johnson. Why don't you make the motion and then we can proceed?

Mr. J. M. Johnson moves that the committee approve the request that the multifaith committee use the Ont Parl satellite transponder on Sunday, February 14, 1988, to broadcast a Multifaith Service of Thanksgiving to be held in Roy Thomson Hall, subject to the following conditions:

1. that the service be broadcast via the Ont Parl satellite transponder from shortly after 6 p.m. until 7:15 p.m. on Sunday, February 14, 1988, so as not to interfere with the Wawatay Native Communications Society signal;

2. that the multifaith committee obtain a temporary network licence from the CRTC for the purposes of the broadcast; and

3. that the multifaith committee enter into a written agreement with TVOntario for the use of TVOntario services for the telecast. One of the provisions of the agreement shall be that the multifaith committee shall obtain broadcasters' errors and omissions insurance coverage in the minimum amount of \$5 million

and that the decision of the committee to approve this request shall not constitute a precedent for future use of the Ont Parl satellite transponder.

Mr. Kent, do you want to proceed?

Mr. Kent: First, thank you for allowing me to come before the committee to make this request. Also, by way of introduction, I wanted to state that Catherine Allman is here from TVO and Bill Somerville, whom I am sure you all know, in case I get into technical difficulties.

I think the motion very well sums up what we are here for. I do not know that I have to add anything to it. The most important part of that, when we first decided to go this route, was that we learned we ran into the Wawatay Native Communications Society use of the satellite. Once the multifaith committee decided that it would in no way interfere with the Wawatay use of the satellite, then I felt a lot better and it cleared the way for the committee, hopefully, to give its blessing to this recommendation.

Beyond that, I will answer any questions that you wish. I can give the background on it. I think you have most of the material before you. I can let you know this much information. It is a highly successful event already, in that the tickets are going at such a rate we probably should have gone back to Maple Leaf Gardens where this thing originally began in 1984 in the presence of Her Majesty. If you have any questions, I will be glad to answer them.

Mr. Faubert: The conditions are all--

Mr. Kent: Yes, the conditions. That is a good point. What I was

waiting for was the blessing of the committee before going to the CRTC. I have already talked to the regional director for CRTC, George Coates. He is awaiting my letter but he does not see any major difficulties. I have also talked to an insurance company about getting the appropriate insurance.

Mr. Breaugh: I have one question. It seems to me a little silly, frankly, that we are constantly sending people off to the CRTC to get a temporary network licence. Are we convinced that is absolutely necessary?

Mr. Kent: I would have to bow to Ms. Allman on this. I understand it is what we have to do.

Ms. Allman: That question would best be put to the CRTC. It is a question of who is to be responsible for the content of the broadcast. As each is different, it would have to fall within a licence. We have established that, because of the licence of the Ontario Legislative Assembly channel, that only really governs the proceedings of the House and its committees. So far, the applications we have had before us have not fallen within that definition. TVOntario's licence is quite different and the applications have not fallen within its licence; therefore, there has to be responsibility held by someone else.

Mr. Breaugh: Let me put it this way. This does not seem to be a major problem for anyone. People seem to be getting it, but it does seem a little silly that every time we get a request, somebody has to go and get a temporary network licence. Perhaps we could pursue that matter with the CRTC to see whether this is absolutely essential, because on both occasions it at least seems questionable whether it is or it is not necessary.

We have suggested that people do this because it seems to resolve the problem, but I am not quite sure that every time we televise an event, somebody needs a temporary network licence. If it is necessary, OK.

1120

Ms. Allman: I would suggest that it is necessary and that we are not alone in doing it. When there are temporary sports events across the country or when the Gemini television awards last year had to go to air by means other than the CBC, all of those groups have to seek temporary network licences.

Mr. Breaugh: Maybe we could get a ruling from the CRTC one way or the other.

Mr. Kent: That certainly is a valid point. I would just add that when I started down this road--I must say I know a lot more about broadcasting than I did when I began--I was literally quite surprised that we had to go and get all this special permission. I thought that since we already have a licence to broadcast the parliamentary proceedings and so on, all we were doing was adding this on to it, but Catherine explained to me that since it is a new, different type of program the CRTC makes this ruling and there is nothing we can do about it.

Mr. Chairman: All those in favour of the motion? Opposed?

Motion agreed to.

Mr. Kent: Thank you very much.

Mr. Chairman: That was not that tough, was it?

ORGANIZATION

Mr. Chairman: We are going to recess for a few minutes unless there is some discussion you want to have with regard to something else. We are hoping the Attorney General (Mr. Scott) is going to be here in a few minutes. The clerk has just gone to check with the cabinet office to see whether the Attorney General--

Interjection.

Mr. Chairman: I know, Mr. McClelland, it is difficult. We are trying to accommodate everybody and we are trying to get the Attorney General out of cabinet so that he can come to the committee and be here at least for half an hour this morning. Then we would start again at two o'clock. I understand two members have to leave and will not be back until two sharp.

Mr. Breaugh: What is your version of the committee schedule for the next day or so?

Mr. Chairman: I can start any time the committee wants to start tomorrow or go as late as you want tonight. If you want to go a little later tonight, it might be helpful.

Mr. Breaugh: My problem is that I really cannot do this on a day-to-day basis. I have to have some idea of how late we are going to sit this afternoon. I have to know when we are going to start tomorrow and what we are likely to be doing tomorrow. I have set up my life on the idea that we will sit the normal hours. We would start at 10 and finish at 12, and we would start at two and end in the afternoon around four or 4:30, something like that. If that is what we are talking about, I am fine. If somebody has a different idea of how long we are going to sit or when we are going to start, start telling me about it now.

Mr. Chairman: Can I put it to you this way. Have you any idea how much more time you think we will need in order to finish this bill?

Mr. Breaugh: It would look to me like we are going to need another day or two to process the bill. For example, this week, it does not help when on Tuesday we cannot sit in the morning and on Wednesday it appears we are not likely to get much time, so we kick a day out of there. We have had two normal committee days to function this week. I think we are going to need another two or possibly three days to finish the bill. That would be my version of the kind of time frame.

Mr. Chairman: "Two" meaning the rest of today and tomorrow?

Mr. Breaugh: It is conceivable that could happen. It is also conceivable we might need another day or two next week. We are not moving very quickly through the bill. I do not sense that anybody is trying to stall this bill. It is just that some of the questions are a little perplexing.

Mr. Cordiano: We are going to sit this afternoon. We will probably be here until 4:30 or five o'clock at the latest.

Mr. Breaugh: Yes.

Mr. Cordiano: That is three hours there and then we have the entire day tomorrow. I can see us needing an additional day, but we have been

discussing most of the principles of the bill from the beginning. The rest of it follows through.

Mr. Breaugh: I think it will go a little faster now.

Mr. Cordiano: We could probably set aside one additional day, but I think we are stretching it beyond that and probably not looking at the real timetable here. If we are going to say we need two or three more days, I cannot see that, quite frankly.

Mr. Breaugh: My guess would be that if we get a full shot at it this afternoon for two or three hours and we get a full day tomorrow, we might be able to finish tomorrow. In part, that depends on what arguments we get into this afternoon. I hope we can finish this bill by tomorrow.

Mr. Cordiano: If we do have to go an additional day, I would say, speaking from a personal point of view now, that I would appreciate it if it would either be this Friday or Monday. I am really constrained next week and I did not plan--nor did we have any idea that we would be sitting in the last week of January. All my plans have been made around that fact. I think that was very clear from quite some time ago, even before Christmas when we did some scheduling for this committee.

Mr. J. M. Johnson: Are we not slated to sit Friday if necessary?

Mr. Breaugh: I would be prepared to do that. If it is the intention of people to sit this Friday, I would really appreciate it if you would tell me today because it means I have to start cancelling other things on Friday.

Mr. Cordiano: Let us do it on Monday.

Mr. J. M. Johnson: Why do we not--

Mr. Chairman: Can I put it to you this way. First, we have a full afternoon scheduled. We have a full morning tomorrow and a full afternoon tomorrow afternoon. That gives us three half days. We may very well finish by tomorrow evening. If we do not finish by tomorrow evening, I gather it is the consensus here that we could finish in at least one more day. I also gather that the day should not be Friday. OK?

Having said that, we have permission from the Legislature to sit Friday but we do not have permission to sit Monday. What we could do, and I do not want to prolong it, is that I could conceivably go to the House leaders and say, "Can we sit?" We could sit Monday if we get that permission. Then we would have to get the Legislature to give us permission retroactively to sit Monday. The Legislature has not given us permission to sit next week. The only way I can get that permission is to go to the House leaders, for them to give me verbal agreement that we can sit and then to make it legal once the House comes back on February 8.

Mr. Cordiano: That would be a tentative--

Interjection: I do not think we are not looking at a whole other day.

Mr. Cordiano: I can see a great possibility of finishing tomorrow.

Mr. Chairman: He left word for the--

Interjections.

Mr. Chairman: Eureka. We have a new clock here that works. It works.

Mr. Breaugh: Are we agreed then that we will not sit on Friday of this week? If it is necessary, we will try to get approval to sit next Monday. I am generally of the opinion that we can probably finish the bill by tomorrow, but I am not giving any guarantees.

Mr. J. M. Johnson: Is there any possibility we could work a little later Thursday?

Mr. Chairman: Let us work on that basis.

Mr. J. M. Johnson: We could pick up an hour if we need it.

Mr. Chairman: We will work tomorrow. We will not sit Friday and, if need be, we will get permission to sit on Monday if I can get it. In the meantime, I will do some soundings.

Mr. Breaugh: This problem that we are encountering in our caucus is one that others have shared at different times. We have trouble when there are more than the allotted number of committees sitting. We have members who are trying to--I have the problem. I am soon going to have to make a choice of which of my committee obligations I fulfil. It will depend on what the committee is doing that day. Everybody else is going to encounter the same difficulty. We are trying to get through but it is difficult. For example, we have had a day removed from the hearing process this week and we will try to make it up someplace else, but it does mean some difficulty.

Mr. Philip: I am sorry, but darting back and forth to another committee today, I may have missed part of it. I gather you said something about Friday is out. That would certainly help the two members on this committee who are also on the Ombudsman committee. The Ombudsman committee is not sitting on Friday but I understand we are likely to ask to sit Monday, which puts us into the same kind of schizophrenic position we are in today where we are darting back and forth to two committees.

Mr. Chairman: I am prepared to sit Friday but I got the general feeling from the members here that Friday was not a very good day. That is why I said that.

Mr. J. M. Johnson: I agree with Mr. Philip that Friday would be far better. We have the same difficulty with Monday.

Mr. Breaugh: Friday is OK by me, but tell me now. That is my only--

Mr. J. M. Johnson: Finish Thursday at 5 o'clock.

Mr. Philip: I move that in the event we do not finish by 4:30 on Thursday, we schedule Friday morning for sitting.

That should be of assistance to the out-of-town members and, hopefully, then we could pack it in.

Mr. Chairman: But do not limit it to Friday morning; just say Friday.

Mr. Philip: Friday morning or sit Friday.

Mr. Chairman: Sit Friday.

Mr. Philip: Because it is just--

Mr. Breaugh: As long as you tell me today, that is fine.

Mr. Chairman: OK.

Mr. Philip: I will book in Friday now--

Mr. Chairman: OK; sit Friday.

Mr. Philip:--but I will not book in Monday.

Mr. Chairman: Just get yourself a replacement.

OK, let us adjourn for five minutes. It is agreed, then, that we will sit tomorrow as long as we can sit, and we will sit on Friday.

The committee recessed at 11:31 a.m.

1135

Mr. Chairman: I call this committee meeting to order to indicate that, because some members had to leave, we will adjourn until two o'clock sharp.

The committee recessed at 11:36 a.m.

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